As detailed below, we modify the safety net additive so that a carrier will receive support for its incremental, or additional, expense adjustment associated with new investment, as opposed to 50 percent of the difference between the study area's capped and uncapped support in a given year.[207] By tying the amount of additional support to a carrier's incremental expense adjustment associated with new investments, we ensure that carriers do not receive additional support for more than the costs incurred as a result of the additional investment. We also address below certain implementation issues regarding the safety net additive. We believe that by modifying the safety net additive mechanism in this way, we provide carriers with predictability in investing in infrastructure, while minimizing the potential burden such a mechanism could have on contributors.

81. We find that a 14 percent increase in a carrier's TPIS per line investment, as proposed by the Rural Task Force, provides a reasonable method for assessing whether the carrier has made significant investment to qualify its study area for safety net additive support. We find that growth in TPIS is a reasonable benchmark for triggering the safety net additive mechanism because increases in TPIS reflect the carrier's overall increases in investment over the past year.[208] While we recognize that not all TPIS investments are supported through the high-cost loop fund, we find that using TPIS as a benchmark for the safety net additive is a reasonable proxy for defining rural infrastructure investment requirements. We note in this regard that investments made in categories other than those supported by high-cost loop support may allow a carrier to qualify for safety net support, but the investment itself would not qualify for additional support under the safety net additive mechanism. Unless the incremental costs associated with new investment are in the categories eligible for support under section 36.621 of our rules, the carrier's incremental costs, for purposes of high-cost loop support, appear unchanged and therefore the carrier would realize no additional support from the safety net additive.[209] Carriers are thus provided with the appropriate incentive to make investments in those categories that affect supported services to the end user, which is the underlying goal of the safety net additive.

82. Moreover, we find that 14 percent growth in TPIS is a reasonable trigger given historical TPIS per-line investment trends. In order to determine which wire centers and study areas are entitled to an expense adjustment, the Commission requires the National Exchange Carrier Association (NECA) to collect data from all incumbent local exchange carriers.[210] Based on the information reported by those carriers, NECA calculates the national and study area average cost per loop.[211] A comparison of the 1999 NECA cost study results to 1998 cost study results shows that, in approximately five percent of cost-study areas, TPIS per-line investment increased by 14 percent or more, while only nine cost-study areas had TPIS per-line investment over 40 percent. The average increase was approximately two percent. While we realize that prospectively this pattern may be altered by inclusion of the safety net additive, our concern and those expressed by commenters regarding the potential for gaming by rural carriers is mitigated because the types of investments the safety net additive supports require time and extensive

[207] The expense adjustment calculated pursuant to section 36.621 of our rules is the amount of high-cost loop support a carrier is eligible to receive. This support amount is based on a carrier's unseparated loop costs in relation to the national average loop cost. See *infra* n.19.

[208] *But cf.* Maine and Vermont Commissions Comments at 11 (arguing that we should "restrict the trigger for the safety net by excluding loop costs.").

[209] 47 C.F.R. §36.621. These categories include investment in cable and wire facilities that are "subscriber of common lines that are jointly used for local exchange service and exchange access for state and interstate interexchange services" and exchange line circuits. 47 C.F.R. § 36.154 (a); 36.126 (b)(1)(iii).

[210] 47 C.F.R. §36.611.

[211] 47 C.F.R. §§ 36.621, 36.622, 36.631.

planning.[212]

83. Accordingly, we conclude that the Rural Task Force has proposed a reasonable figure for what constitutes significant investment and thus we set the safety net trigger at 14 percent. We therefore disagree with those commenters who claim that setting the threshold as high as 14 percent effectively denies the neediest of rural carriers access to the additional support under this new mechanism.[213] In doing so, we ensure that carriers that make significant investment will receive additional support in years in which the cap is reached.[214]

84. While we agree that study areas with at least 14 percent increase in TPIS should qualify for safety net additive support, we conclude that the Rural Task Force's proposed safety net mechanism should be modified to ensure that carriers do not receive support in excess of the incremental costs associated with new investment. We note that, with the modification we adopt below, any carrier that makes the requisite investment will receive support for the incremental expense adjustment associated with that investment as if the fund had not been capped.[215]

85. As proposed, the safety net additive support mechanism would allow carriers to recover "50 percent of the difference between the capped expense adjustment and the uncapped amount for the study area" in each year that the cap is implicated.[216] A carrier could recover more than 100 percent of the incremental expenses associated with new investment because under the Rural Task Force's proposal the safety net additive mechanism fails to isolate only the additional investment. Instead, safety net additive support would be calculated based on a carrier's total expense adjustment in the year in which the carrier qualifies for safety net additive (qualifying year), which includes the base year expense adjustment as well as the additional expense adjustment resulting from the additional investment. For example, assume that a carrier's overall expenses would make it eligible to receive support for 65 percent of its study area's average unseparated loop cost that is above 115 percent of the national average loop cost.[217] Further assume that in the base year the carrier receives $1000, and that capped support is $950. Also assume that, in the year in which the carrier qualifies for the safety net additive, the carrier's uncapped support would be $1200, while the capped support would be $1140. As proposed by the Rural Task Force, the carrier would receive its capped support of $1140, plus 50 percent of the difference between the capped support and the uncapped support in the qualifying year, or $30 (($1200 - $1140 ÷ 2)). The incremental expense adjustment support not received as a result of the cap, however, is $10 (($1200 - $1000) – ($1140 - $950) or ($200) – ($190)). In this example, the $200 increase in expenses in the qualifying year is the amount that should be isolated because it represents the additional investment causing an increase in the carrier's expense adjustment. This amount should then be compared to the amount that the carrier's capped support has grown, or $190, because that is the additional amount that

[212] CUSC Comments at 8 (asserting that carriers would have an incentive to defer investment only to later make large investments to qualify for support). *See also* California Commission Comments at 9.

[213] *See* NTCA Comments at 17; SDITC Comments at 6; Telecom Consulting Associates Comments at 11.

[214] As discussed *infra*, section 254(e) of the Act requires that all carriers, rural and non-rural, that are certified as eligible telecommunications carriers use universal service support only for the "provision, maintenance, and upgrading of facilities and services for which the support is intended." *See infra* section IV.G; 47 U.S.C. § 254(e) As discussed in section IV.G of this Order, we have adopted a provision that requires the states to certify that the eligible telecommunications carriers operating within their jurisdiction will use universal service funds in a manner that is consistent with 254(e). *See infra* section IV.G.

[215] *See* 47 C.F.R. § 36.631.

[216] *See* Rural Task Force Recommendation at 27.

[217] 47 C.F.R. § 36.631.

the cap is already supporting without safety net additive.

86. Because the safety net additive is intended to provide support to eligible carriers that incur costs associated with additional investment, we find that safety net additive should be based on the additional expense adjustment resulting from the additional investment only.[218] We therefore modify the safety net additive so that, in the qualifying year, safety net additive will be determined by subtracting from the carrier's expense adjustment in the qualifying year its expense adjustment in the base year, and then subtracting from that amount the difference between the capped support in the qualifying year and the capped support in the base year. This amount will be in addition to the capped support it receives in that year.[219] In no event shall a carrier that is eligible for safety net additive receive less support than it would normally receive under the cap. We believe that, by allowing carriers to receive the same level of support they would have received had the cap not been in effect, we encourage new investment by making support predictable while ensuring that carriers do not receive support for more than their incremental costs. Consistent with the principle of competitive neutrality, we conclude that safety net additive shall be available to competitive eligible telecommunications carriers in an amount equal to that received by the incumbent.[220]

87. We clarify that, if our safety additive net formula results in a negative amount, the carrier will not be eligible for safety net additive in that year. For example, it is possible that the incremental increase in expense adjustment incurred by a carrier when compared to the incremental support received by the carrier through the indexed fund may result in a negative amount. Such a result would indicate that the carrier actually received support for the incremental expense adjustment available under the safety net mechanism through operation of the cap.[221]

88. We adopt the Rural Task Force's proposal that, once a study area qualifies for safety net additive, the study area will receive such support in any of the remaining years of this plan in which the cap is triggered, whether or not the study area meets the 14 percent TPIS trigger in those years. Providing support in the years succeeding the qualifying year is consistent with the manner in which carriers depreciate capital costs associated with new investments. Such costs generally are not recovered in one year; rather they are recovered over multiple years. Thus, by providing carriers with support over multiple years, we give them an opportunity to receive support for more of the expenses associated with their investments. In any of the succeeding four years in which the cap is again triggered, the carrier will be eligible for the lesser of the sum of capped support and the safety net additive received in the qualifying year or uncapped support. Therefore, qualifying carriers will receive safety net additive in each year that the cap is triggered under the five-year plan we adopt in this order.

89. We find that carriers shall be required to provide written notice to the Commission and USAC in conjunction with their annual or quarterly submissions to NECA indicating that a study area

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[218] *See* Maine and Vermont Commissions Comments at 10-11 (Arguing that the mechanism as proposed by the Rural Task Force produces "support in excess of 100 percent of incremental cost").

[219] Safety net additive support = (Uncapped support in the qualifying year – Uncapped support in the base year) – (Capped support in the qualifying year – Actual support in the base year). *See* 47 C.F.R. § 36.631.

[220] *See First Report and Order*, 12 FCC Rcd at 8801-02 paras. 46-48, 8932-34 paras. 286-90.

[221] For example, assume that a qualifying carrier's uncapped expense adjustment in the base year is $1000 and capped support is $930. Further assume that in the qualifying year the carrier's uncapped expense adjustment is $1200 and capped support is $1164. The resulting amount of support would be a negative $34 ((1200 – 1000) – (1164 – 930) or (200) – (234)).

meets the 14 percent TPIS trigger.[222] If a carrier should fail to provide written notification to the Commission and USAC, the study area that otherwise would have qualified for safety net additive will not be eligible.[223] By requiring written notification from the carrier, we minimize the administrative burden placed on USAC and will help control the costs associated with implementing this mechanism. To require USAC to determine eligibility would require it to monitor TPIS investment for all 873 cost study areas.

90. In the context of the modifications to the high-cost support mechanism that we adopt in this Order, we believe that safety net additive support is a reasonable means of ensuring that rural carriers that make significant investments receive adequate but not excessive support for such investments. By limiting safety net additive support to those carriers who have TPIS per-line investment increases of 14 percent or more in a given year, support is tailored to those carriers who make extraordinary investment. In addition, by ensuring that carriers have a mechanism that provides support outside the cap for new investment, we encourage carriers to make these needed investments in their communities.[224] By crafting the mechanism to provide support based on incremental costs associated with new investments, we control for the possible overcompensation that would have occurred under the Rural Task Force's proposal.[225]

2. Mergers and Acquisitions Cap and "Safety Valve" Mechanism

a. Background

91. Section 54.305 of our rules provides that a carrier acquiring exchanges from an unaffiliated carrier shall receive the same per-line levels of high-cost universal service support for which the acquired exchanges were eligible prior to their transfer.[226] Section 54.305 was adopted in the *First Report and Order* as a temporary measure aimed at discouraging carriers from transferring exchanges merely to increase their share of high-cost universal service support during the Commission's transition to universal service support mechanisms that provide support to carriers based on the forward-looking economic cost of operating a given exchange.[227] The Commission was concerned that, until support for all carriers is based on a forward-looking economic costs methodology, potential universal service payments may unduly influence a carrier's decision to purchase exchanges from other carriers.[228]

92. Under section 54.305 of the Commission's rules, if a rural carrier purchases an exchange from a non-rural carrier that receives support based on the Commission's new universal service support mechanism for non-rural carriers,[229] the loops of the acquired exchange receive the same per-line support as calculated at the time of the transfer under the new non-rural mechanism, regardless of the rural

[222] 47 C.F.R. §§ 36.611; 36.612. Rural carriers are required to make annual cost study submissions, whereas, quarterly updates are voluntary unless a competitor enters one of their disaggregation zones. *See infra* n.330.

[223] Once a carrier misses the filing requirement, it would need to make the requisite 14 percent TPIS investment in a subsequent year for the study area to again be eligible.

[224] *But cf.* California Commission Comments at 9; CUSC Comments at 8.

[225] Consistent with the 254(e) certification requirements we adopt today, state commissions shall certify that a carrier's use of safety net support is consistent with section 254(e). *See infra* para. 187.

[226] 47 C.F.R. § 54.305.

[227] *See First Report and Order,* 12 FCC Rcd at 8942-43 para. 308.

[228] *Id.*

[229] *See supra* description of non-rural high-cost support mechanism at para. 15.

carrier's cost characteristics or the support the rural carrier purchasing the exchange may receive for any other exchanges.[230] High-cost support mechanisms that are subject to the limitations in section 54.305 include non-rural carrier forward-looking high-cost support,[231] interim hold-harmless support for non-rural carriers,[232] rural carrier high-cost loop support, local switching support,[233] and Long Term Support (LTS).[234] To the extent that a carrier acquires exchanges receiving any of these forms of support, the acquiring carrier will receive the same per-line levels of support for which the acquired exchanges were eligible prior to their transfer.

93. The Rural Task Force outlined principles for providing universal service support to exchanges acquired by rural carriers. The Rural Task Force acknowledged the valid policy considerations underlying section 54.305 of our rules, while recognizing that the operation of section 54.305 may discourage carriers from acquiring high-cost exchanges that currently are eligible for limited amounts of universal service support.[235] According to the Rural Task Force, customers in high-cost rural exchanges involving transfers should not be "doomed" to poor service because the selling carrier has limited access to universal service support funds.[236] The Rural Task Force also stated that universal service support should "provide incentives for new investment in rural America."[237] On the other hand, the Rural Task Force asserted that a mere transfer of ownership should not result in increased support for acquired lines. The Rural Task Force stated that "universal service support also should not artificially inflate the price on sale/transfer transactions."[238]

94. The Rural Task Force therefore recommended that the Commission establish an appropriate "safety valve" mechanism, which would enable rural carriers acquiring access lines to receive additional support over a period of five years reflecting "post-transaction investment made to

[230] *See First Report and Order*, 12 FCC Rcd at 8942-43 para. 308.

[231] *See* 47 C.F.R. § 54.309.

[232] In the event that support provided to a non-rural carrier in a given state is less under the forward-looking methodology, the carrier is eligible for interim hold-harmless support, which is equal to the amount of support for which the non-rural carrier would have been eligible under the Commission's existing high-cost support mechanism. *See* 47 C.F.R. § 54.311. The Commission recently adopted the recommendations of the Joint Board for phasing down the interim hold-harmless support for non-rural carriers. *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Thirteenth Report and Order and Further Notice of Proposed Rulemaking, FCC 00-428 (rel. Dec. 8, 2000). The Commission adopted measures to phase down interim hold-harmless support, excluding LTS, through $1.00 reductions in average monthly, per-line support beginning January 1, 2001, and every year thereafter until there is no more interim hold-harmless support. *Id.* at para. 1. The Commission also adopted the Joint Board's recommendation not to phase down interim hold-harmless support for eligible exchanges transferred to rural carriers until the Commission reexamines section 54.305 or until rural high-cost reform is complete. *Id.* at para. 21. Interim hold-harmless support for exchanges transferred to non-rural carrier will be phased down over the same time period as the seller's support would have been phased down. *Id.* at para. 22. The Commission also sought comment on whether to continue applying section 54.305 to transfers of telephone exchanges between non-rural carriers following phase-down. *Id.* at paras. 23-24.

[233] *See supra* discussion at n.21.

[234] *See supra* discussion at n.21.

[235] *See* Rural Task Force Recommendation at 29-30.

[236] *See id.*

[237] *Id.*

[238] *Id.*

enhance the infrastructure of and improve the service in these exchanges."[239] The Rural Task Force also stated that any transferred support or additional support under the safety valve mechanism should be excluded from the re-based cap on high-cost loop support.[240] Finally, the Rural Task Force stated that the safety valve mechanism should be capped at some appropriate level.

95. The Rural Task Force provided an example of a safety valve mechanism in Appendix D of its Recommendation.[241] The Rural Task Force noted, however, that the safety valve example was used illustratively (*i.e.*, it does not represent a consensus of the Rural Task Force members).[242] In Appendix D, the Rural Task Force proposed that safety valve support should be based on the difference between an "index year expense adjustment" calculated for the acquired exchanges in accordance with section 36.631 of the Commission's rules and subsequent year expense adjustments.[243] The "expense adjustment" formulas included in section 36.631 of the Commission's rules are used to calculate high-cost loop support for rural carriers. A carrier's expense adjustment is based on the relationship between a carrier's study area average unseparated loop cost per working loop and the national average cost per loop.[244] The index year expense adjustment would be the study area's high-cost loop support expense adjustment calculated at the end of the acquiring company's first year of operations.[245] Fifty percent of any positive difference between subsequent year expense adjustments and the index year expense adjustment would be designated as safety valve support and would be provided in addition to transferred support amounts available under section 54.305. The Rural Task Force's example also limited the total safety valve support available to all eligible study areas to no more than five percent of the indexed high-cost loop fund cap for rural carriers.[246] Moreover, the Rural Task Force's example created a new study area for each transfer of exchanges and excluded transferred exchanges from the rural growth factor.[247] The Rural Task Force's example also made per-loop transferred support portable to competitive eligible telecommunications carriers.[248]

96. The Joint Board generally supported the Rural Task Force's proposal for providing additional support to rural carriers that acquire high-cost exchanges and make post-transaction investments to enhance the network infrastructure, but urged the Commission to address issues relating to the implementation of the safety valve mechanism.[249] First, the Joint Board urged the Commission to consider how to distribute safety valve support if the total amount of eligible safety valve support exceeds the cap of five percent of the rural carrier portion of the indexed high-cost loop support fund.[250] Next, the Joint Board asked the Commission to examine whether it would be more appropriate to define the index year expense adjustment for purposes of calculating safety valve support as the year prior to

[239] *See id.* at 29.

[240] *See id.*; *see also supra* discussion at para. 45.

[241] *See* Rural Task Force Recommendation at Appendix D.

[242] *See* Rural Task Force Comments at 6-7.

[243] *See* Rural Task Force Recommendation at Appendix D-1.

[244] *See* 47 C.F.R. § 36.631.

[245] *See* Rural Task Force Recommendation at Appendix D.

[246] *See id.*

[247] *See id.*

[248] *See id.*

[249] *See Joint Board Recommended Decision* at para. 16.

[250] *See id.*

the subsequent year expense adjustment.[251] In addition, the Joint Board urged the Commission to address whether a carrier's safety valve support should transfer to a different carrier as a result of a subsequent transfer of exchanges. Finally, the Joint Board requested that the Commission consider whether safety valve support is frozen when a competitive eligible telecommunications carrier enters the study area.[252]

b. Discussion

97. We agree with the Rural Task Force, the Joint Board, and several commenters that we should provide additional support to rural carriers that acquire high-cost exchanges and make post-transaction investments to enhance network infrastructure.[253] We continue to believe that section 54.305 serves the important purpose of discouraging carriers from transferring exchanges merely to increase their share of high-cost universal service support during the Commission's transition to universal service support mechanisms that provide support to all carriers based on the forward-looking economic cost of operating a given exchange.[254] On other hand, we recognize that the section 54.305 of our rules may have some unintended consequences. Specifically, the operation of section 54.305 may discourage rural carriers from acquiring high-cost exchanges from carriers with low average costs and may prevent rural carriers from receiving support for new investments in recently-acquired high-cost exchanges. As a result, we do not agree with commenters that support retaining section 54.305 without any modifications.[255] We conclude that section 54.305 should be retained, but modified to provide additional support to rural carriers that make substantial investment after acquiring exchanges.[256] In reaching this conclusion, we are mindful that the Rural Task Force's principles for providing additional support for significant post-transaction investments in the infrastructure of acquired exchanges represent a consensus of the Rural Task Force members. We therefore agree with commenters that oppose outright elimination of section 54.305 of our rules,[257] and do not agree with the MAG and certain commenters that we should entirely eliminate section 54.305.[258]

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[251] *See id.* at para. 16 n.47. As currently proposed, the index year expense adjustment is the study area's high-cost loop support expense adjustment calculated at the end of the acquiring company's first year of operations.

[252] *Id.*

[253] *See id.* at para. 16. *See, e.g.,* Alaska Rural Coalition Reply Comments at 2-3; Innovative Telephone Comments 24; Interstate Telecom Group Comments at 9.

[254] *See First Report and Order,* 12 FCC Rcd at 8942-43 para. 308.

[255] *See, e.g.,* Ad Hoc Telecommunications User Committee Reply Comments at 16-17; WorldCom Reply Comments at 9-10. *See also, e.g.,* ASCENT Comments in CC Docket No. 00-256 at 6; AT&T Comments in CC Docket No. 00-256 at 18-19; California Commission Comments in CC Docket No. 00-256 at 25-26; CUSC Comments in CC Docket No. 00-256 at 19; Florida Comments in CC Docket No. 00-256 at 5; WorldCom Comments in CC Docket No. 00-256 at 17-18.

[256] *See, e.g.,* CenturyTel Comments at 3-8; GVNW Consulting Comments at 1-2; Innovative Telephone Comments at 24; NECA Comments at 9; Texas Commission Comments at 6; SDITC Comments at 7-8; Sprint Comments at 4; Telecom Consulting Associates Comments at 12; Western Alliance Comments at 8.

[257] *See, e.g.,* Ad Hoc Telecommunications User Committee Reply Comments at 16-17; California Commission Comments at 13; WorldCom Reply Comments at 9-10; *See also* AT&T Comments in CC Docket No. 00-256 at 18-19; California Commission Comments in CC Docket No. 00-256 at 25; WorldCom Comments in CC Docket No. 00-256 at 17-18.

[258] *See* MAG Comments in CC Docket No. 00-256 at 29-30; *see also* Letter of William F. Maher, Jr. to Magalie Roman Salas, FCC, dated November 21, 2000 ("The plan is intended to propose the deletion of current section 54.305 . . . from the Commission's rules."). *See also, e.g.,* CenturyTel Comments at 5; Fred Williamson & Assoc. Comments at 11; GVNW Consulting Comments at 1; Iowa Telecom Reply Comments at 2-3; NECA Comments at
(continued….)

98. As discussed in greater detail below, we adopt certain aspects of the Rural Task Force's example of a safety valve mechanism. We conclude that a safety valve mechanism, as clarified herein, will provide appropriate incentives for rural carriers operating recently-acquired exchanges to invest in rural infrastructure. We conclude that safety valve support should be provided for up to 50 percent of any positive difference between the rural incumbent local exchange carrier's index year expense adjustment for the acquired exchanges and subsequent year expense adjustments. We agree with the Rural Task Force's example and conclude that the total safety valve support available to all eligible study areas should be limited to no more than five percent of rural incumbent local exchange carrier support available from the annual high-cost loop fund, as set forth in the Rural Task Force's example.[259] We do not agree with the Rural Task Force's example that a new study area should be created for each transfer of exchanges.[260] We agree that per-loop transferred support should be transferable to competitive eligible telecommunications carriers.[261] In addition, consistent with the Rural Task Force's principles for providing universal service support to acquired or transferred exchanges, we conclude that safety valve support should not be frozen whenever a competitor enters a study area eligible for such support.[262]

99. *Index Year Expense Adjustment*. We agree with the Rural Task Force's example that, for purposes of determining a rural carrier's safety valve support for acquired exchanges, the index year expense adjustment shall be defined as the high-cost loop support expense adjustment for the acquired exchanges calculated at the end of the company's first year operating the exchanges.[263] Acquiring carriers will establish an index year expense adjustment for the acquired exchange through cost data submitted in accordance with section 36.611 or section 36.612 of our rules.[264] Under section 36.611 of the Commission's rules, all incumbent local exchange carriers, including rural carriers, submit loop cost data to NECA on an annual basis.[265] Under section 36.612 of our rules, rural carriers have the option of submitting loop cost data to NECA on a quarterly basis.[266] NECA compiles and analyzes these data to determine an incumbent local exchange carrier's study area expense adjustment, which is based, in part,

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9; NRTA, OPASTCO, & USTA Comments at 4; NTCA Comments at 4-5; Telecom Consulting Associates Comments at 12; *see also* Alaska Rural Coalition Comments in CC Docket No. 00-256 at 3-4; Innovative Telephone Comments in CC Docket No. 00-256 at 11-13; MAG Comments in CC Docket No. 00-256 at 29-30; Summit Tel. Co. Comments in CC Docket No. 00-256 at 3; Wisconsin Commission Comments in CC Docket No. 00-256 at 4-5.

[259] As discussed in section IV.C.1.b, we agree that exchanges transferred to rural telephone companies should be excluded from the rural incumbent local exchange carrier portion of the high-cost loop fund and from the rural growth factor. *See supra* discussion at paras. 45, 53.

[260] *See infra* discussion at para. 110.

[261] *See infra* discussion at para. 113.

[262] *See infra* discussion at paras. 114-115. We note that the Competitive Universal Service Coalition (CUSC) requests that the Commission clarify that exchange sales or transfers to smaller incumbent LECs will not affect preexisting designations of competitive eligible telecommunications carriers. *See* CUSC Comments App. A at 17-18. In particular, CUSC requests that the Commission clarify that existing competitive eligible telecommunications carriers should not be required to return to the designating commission for a public interest finding or serve additional areas if the exchanges they serve are sold to a carrier that satisfies the definition of "rural telephone company." *See id.* Because this issue does not directly relate to the implementation of the safety valve mechanism or any other aspect of the Rural Task Force Recommendation, we do not address it in this order.

[263] *See* Rural Task Force Recommendation at Appendix D.

[264] *See* 47 C.F.R. §§ 36.611, 36.612.

[265] *See* 47 C.F.R. § 36.611.

[266] *See* 47 C.F.R. § 36.612.

on the relationship between a carrier's study area average unseparated loop cost per working loop and the national average cost per loop.[267] For carriers establishing an index year for acquired exchanges pursuant to section 36.611, the index year for the acquired exchange(s) shall commence at the beginning of the next calendar year after the transfer of said exchanges. For carriers establishing an index year for acquired exchanges pursuant to section 36.612, the index year for the acquired exchange(s) shall commence at the beginning of the next calendar quarter after the transfer of said exchanges. An acquiring carrier's expense adjustment for the acquired exchanges in subsequent years shall end on the same calendar quarter. By submitting loop cost data for acquired exchanges on a quarterly, as opposed to annual, basis, a carrier could establish its index year expense adjustment earlier and therefore potentially could begin receiving safety valve support earlier. In order to assist USAC in the administration of the safety valve mechanism, rural carriers shall provide written notice to USAC of when their index year has been established for purposes of calculating eligibility for safety valve support.

100. We conclude that basing safety valve support on the difference between an acquiring carrier's expense adjustment at the end of its first year of operations and subsequent year expense adjustments reasonably approximates a carrier's new investments in the acquired exchanges. We therefore believe that the safety valve mechanism will provide acquiring rural carriers with support for new investments that is within the range of sufficiency envisioned by the principles espoused in section 254(b)(5) of the Act. We also believe that calculating safety valve support on this basis will provide acquiring carriers with predictability as to whether they will qualify for safety valve support in a given year.[268] In particular, because we freeze the national average loop cost at $240.00, as long as an acquiring rural carrier's study area average unseparated loop cost per working loop is more in the current year than in the index year, the carrier likely will qualify for safety valve support.[269] As discussed above, a carrier's expense adjustment is based on the relationship between the carrier's study area average unseparated loop cost per working loop and the national average cost per loop.[270]

101. Consistent with section 254(d) of the Act, we also conclude that the proposed methodology for calculating safety valve support based on the difference between the acquired exchange's index year expense adjustment and subsequent year expense adjustments will minimize burdens on carriers to contribute to the universal service mechanisms.[271] The Rural Task Force's proposal will ensure that acquiring rural carriers receive no more than 50 percent of the difference between their acquired exchange expense adjustment for the first full year of operation of the acquired exchange and subsequent year expense adjustments. In this manner, acquiring carriers will only receive safety valve support for new investments in rural infrastructure.

102. We decline to modify the Rural Task Force's proposal by defining the index year expense adjustment, for purposes of determining the annual safety valve support amounts in a particular year, as the year immediately prior to that particular year's expense adjustment.[272] This modified proposal would prevent an acquiring carrier from receiving safety valve support if the carrier's expense

[267] *See* 47 C.F.R. § 36.631.

[268] *Id.*

[269] *See supra* discussion at paras. 55 to 59. We note, however, that if the sum of the actual high-cost loop support nationwide exceeds the indexed cap on the high-cost loop support fund, NECA increases the amount of the national average loop cost in order to ensure that the total amount of high-cost loop support disbursed does not exceed the indexed cap. *See supra* para. 58.

[270] *See supra* discussion at para. 95.

[271] *See* 47 U.S.C. § 254(d).

[272] *See Joint Board Recommended Decision* at para. 16 n.47.

adjustment does not increase in a given year. For example, if a carrier depreciates an investment made in year one equally over the subsequent four years, the carrier would not be able to receive support for amounts depreciated in each of those four years if the index year expense adjustment is defined as the year prior to that particular year's expense adjustment. Under this scenario, the carrier would only be eligible for safety valve support in the first year. Because there would be no year-to-year increase in the carrier's expense adjustment after the first year, the carrier would be ineligible for safety valve support in subsequent years. This modified proposal also may create incentives for a carrier to include all of its investment in one year's expense adjustment in order to maximize receipt of safety valve support. Similarly, this proposal may simply discourage carriers from making post transaction investments in acquired exchanges because they would be unable to recover costs associated with such investment. We therefore decline to define the index year expense adjustment as the year prior to the subsequent year expense adjustment.

103. We also decline to define the index year expense adjustment as prior to the end of an acquiring carrier's first year of operations of the acquired exchange.[273] Because rural carriers most often acquire high-cost exchanges from non-rural carriers operating in large study areas with lower average costs,[274] we conclude that it would be inappropriate for acquiring carriers to rely on the cost data of selling carriers in establishing the index year expense adjustment. We also conclude that carriers should not be permitted to rely on projected expenses when establishing their index year expense adjustment. Such a proposal would provide acquiring carriers with incentives to underestimate their expenses in the index year in order to maximize future safety valve support. Establishing the index year expense adjustment prior to the end of acquiring carriers' first year of operations also would result in additional filing requirements beyond those included in sections 36.611 and 36.612 of our rules.[275] We therefore decline to adopt proposals to define the index year expense adjustment prior to the end of an acquiring carrier's first year of operations.

104. We also conclude that certain clarifications are necessary to ensure that the safety valve mechanism does not enable carriers to receive excessive amounts of high-cost universal service support for acquired exchanges. We clarify that in no event shall a rural carrier's acquired exchanges receive more through the transfer of high-cost support and the safety valve mechanism than it would receive in uncapped high-cost loop support. That is, a study area's safety valve loop cost expense adjustment cannot exceed the difference between the acquired exchanges' uncapped annual study area loop cost expense adjustment calculated pursuant to section 36.631 of our rules and transferred support amounts available under section 54.305(a) of our rules. Without this limitation, a rural carrier, for example, could acquire exchanges eligible for $50 per loop in targeted interim hold-harmless support and an additional $25 per loop in safety valve support, while only being eligible for $60 per loop in uncapped high-cost loop support for the acquired exchanges. This would equal a $15 per-loop over-recovery.

105. As proposed, the Rural Task Force's example would enable carriers with acquired

[273] *See* CenturyTel Comments at 5-7; Interstate Telecom Group Comments at 11; NECA Comments at 9; NTCA Comments at 7-9.

[274] Even though non-rural carriers currently receive high-cost support based on forward-looking economic costs, non-rural carriers are required to report their study area average costs to NECA on an annual and quarterly basis in accordance with sections 36.611 and 36.612 of our rules. *See* 47 C.F.R. §§ 36.611, 36.612. Such costs are used in determining the national average loop cost. *See* 47 C.F.R. §§ 36.621, 36.622.

[275] *See* 47 C.F.R. §§ 36.611, 36.612.

exchanges that are not eligible for high-cost loop support to receive safety valve support.[276] We clarify that safety valve support only will be available to rural carriers that would otherwise qualify for high-cost loop support for the acquired exchanges under section 36.631 of our rules.[277] Consistent with the Commission's reasons for adopting section 54.305 of our rules, these clarifications will ensure that the potential for safety valve support does not unduly influence a rural carrier's decision to purchase exchanges from another carrier.[278]

106. We also clarify that acquiring rural carriers shall not be permitted to qualify for safety net additive support for acquired exchanges that are subject to section 54.305 of our rules. As discussed above, both safety net additive support and safety valve support enable rural carriers to recover above-the-cap support for new investments.[279] Safety net additive applies to new investments in existing exchanges while safety valve support applies to new investments in acquired exchanges. Permitting carriers to recover both safety net additive and safety valve support for investments in the same exchanges could result in the double recovery of costs. We therefore clarify that acquiring carriers shall not be permitted to qualify for safety net additive support for acquired exchanges and by application of this same analysis, we also conclude that safety net additive support shall not transfer with acquired exchanges.[280]

107. *Five Percent Cap on Safety Valve Support*. We agree with the Rural Task Force's example that the total amount of safety valve support available to all eligible study areas should be limited to no more than five percent of rural incumbent local exchange carrier support available from the annual high-cost loop fund.[281] To the extent that rural carriers receive less than the indexed cap on the high-cost loop fund, the five percent cap on the safety valve mechanism shall be based on the lesser amount. Just as the indexed cap is a reasonable means of limiting the overall growth of the portion of the high-cost loop fund that is distributed to rural incumbent local exchange carrier study areas,[282] we believe that a five percent cap on the safety valve mechanism will prevent uncontrollable growth. A five percent cap also will help minimize the burden on contributors to the universal service support mechanisms, while allowing the safety valve mechanism to grow at a rate that will encourage investment in rural areas.[283]

108. We further conclude that a five percent cap on the safety valve mechanism will ensure the availability of specific and predictable support for new investment in acquired exchanges while at the same time not encouraging speculative purchases of exchanges for more than their book value.[284] Based

[276] Because the benchmark or index year expense adjustment used in determining safety valve support is based on the carrier's own costs, a carrier potentially could qualify for safety valve support without also qualifying for high-cost loop support.

[277] *See* 47 C.F.R. § 36.631.

[278] *See First Report and Order*, 12 FCC Rcd at 8942-43 para. 308.

[279] *See supra* discussion at paras. 79-84, 99-101.

[280] *See infra* discussion at para. 113.

[281] *See* Rural Task Force Recommendation at Appendix D. We note that the five percent cap was included in the Rural Task Force's example of a safety valve mechanism for illustrative purposes only. *See* Rural Task Force Comments at 6.

[282] *See Fourth Order on Reconsideration,* 13 FCC Rcd at 5343 para. 39.

[283] The five percent cap on safety valve support will grow as the indexed cap on the high-cost loop fund grows by the rural growth factor, discussed *supra* at paras. 48-53.

[284] *See* 47 U.S.C. § 254(b)(5).

on estimates of growth in the rural carrier portion of the modified high-cost loop fund provided by the Rural Task Force, we project that the five percent cap on the safety valve mechanism will reach approximately $63 million annually by June 30, 2006.[285] It is unlikely that annual demand for safety valve support will exceed the proposed five percent cap. This conclusion is based on an analysis of projected transfers to rural carriers and annual increases in per line high-cost loop support for rural carriers, taking into account increases in the transfer of lines to rural carriers over time and the fact that rural carriers may have higher than average increases in annual expense adjustments for acquired exchanges. We therefore do not agree with commenters that no cap, or a higher cap, should be placed on the safety valve mechanism.[286]

109. As discussed above, the Joint Board urges the Commission to consider the distribution of safety valve support if the total amount of eligible safety valve support exceeds the cap of five percent of the rural carrier portion of the indexed high-cost loop support fund.[287] We agree with commenters that, if the total amount of eligible safety valve support in a given year exceeds the cap of five percent of the rural carrier portion of the indexed high-cost loop support fund, the percentage used to calculate the safety valve loop cost expense adjustment will be reduced until all safety valve support fits under the five percent cap.[288] In such years, carriers eligible for safety valve support will receive less than 50 percent of the positive difference between the subsequent year expense adjustment and the index year expense adjustment.[289] We believe that such a *pro rata* reduction will ensure that all carriers eligible for safety valve support continue to receive explicit and predictable support for new investments in infrastructure.

110. *Creation of New Study Areas*. We decline to adopt the proposal in the Rural Task Force safety valve example to create a new study area for each transfer of exchanges.[290] The Commission froze all study area boundaries effective November 15, 1984, and an incumbent local exchange carrier must apply to the Commission for a waiver of the study area boundary freeze if it wishes to sell or purchase additional exchanges and the transaction requires the alteration of a study area boundary.[291]

111. We are concerned that the creation of a new study area for each transfer of exchanges would enable carriers to gain an unfair advantage from the high-cost support mechanisms. For example, under the safety valve, an acquiring carrier could take advantage of the high-cost support mechanisms by

[285] *See* Letter from William R. Gillis, Chair, Rural Task Force, to Magalie Roman Salas, FCC, dated November 10, 2000, at Attachment 2. This estimate assumes that the indexed cap on the high-cost loop fund will be triggered in 2006. To the extent that rural carriers are eligible for less high-cost loop support than is available from the indexed cap, the amount of available safety valve support would be based on the lesser amount.

[286] *See* NTCA Comments at 9-10; SDITC Comments at 8; *but see* California Commission Comments at 13.

[287] *See Joint Board Recommended Decision* at para. 16.

[288] *See* AT&T Comments at 13; CUSC Comments at 5; Innovative Telephone Comments at 25; NECA Comments at 9; Western Alliance Comments at 7-8.

[289] In contrast, under section 36.622 of our rules, if the sum of loop costs nationwide exceeds the indexed cap on the high-cost support fund, certain carriers with above average loop costs would not receive high-cost loop support. *See supra* discussion at para. 31. The national average loop cost would be increased in order to ensure that the total amount of high-cost loop support disbursed does not exceed the indexed cap.

[290] *See* 47 C.F.R. § 36 Appendix-Glossary (defining "study area").

[291] *See MTS and WATS Market Structure, Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board*, CC Docket Nos. 78-72, 80-286, Recommended Decision and Order, 49 Fed. Reg. 48325 (1984) (*1984 Joint Board Recommended Decision*); Decision and Order, 50 Fed. Reg. 939 (1985) (*Order Adopting Recommendation*); *see also Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board*, CC Docket No. 80-286, Notice of Proposed Rulemaking, 5 FCC Rcd 5974 (1990).

structuring a transaction to create separate study areas that satisfy the definition of rural telephone company,[292] and, therefore, qualify for rural high-cost support, including safety valve support. An acquiring carrier also could structure its transaction so that higher-cost exchanges are isolated into a separate study area.[293] Such a result would undermine the goals the Commission sought to achieve when it froze all study area boundaries. The study area freeze is intended to prevent carriers from setting up high-cost exchanges within their existing service territory as separate study areas to maximize high-cost support.[294] As a result, the Commission consistently has rejected requests to create multiple study areas in connection with acquisitions requiring study area waivers.[295] The Commission specifically has concluded that, where an incumbent local exchange carrier is acquiring exchanges in a state in which it already operates, the creation of an additional study area is unwarranted.[296] We therefore do not adopt the proposal in the Rural Task Force safety valve example to automatically create a new study area with each new transfer of exchanges.

112. For similar reasons, we also decline to adopt a proposal in the MAG plan to permit rate-of-return carriers to alter the boundaries of their study areas without obtaining a waiver of the study area definition.[297] As discussed above, the study area freeze is intended to prevent carriers from setting up high-cost exchanges within their existing service territories as separate companies to maximize high-cost support. The MAG proposal would enable rate-of-return carriers to alter the boundaries of study areas in order to maximize high-cost loop support, potentially to the detriment of other carriers receiving support because of the indexed cap on the high-cost loop fund.[298] The MAG proposal particularly would enable carriers to maximize their eligibility for safety valve support. We therefore decline to adopt the MAG proposal to permit rate-of-return carriers to alter study area boundaries without obtaining a waiver of the study area definition.

[292] *See* 47 C.F.R. § 51.5.

[293] We also note that in the absence of section 54.305 of our rules, the isolation of higher-cost exchanges into a separate study area would enable an acquiring carrier to take advantage of the high-cost loop support mechanism by reporting average loop costs in the higher-cost study area further above the national average loop cost than would be possible if the exchanges remained consolidated in a single study area with lower-cost exchanges. *See* 47 C.F.R. §§ 36.631, 54.305. In the absence of 54.305, the isolation of higher-cost exchanges into a separate study area also would enable an acquiring carrier to gain an unfair advantage under local switching support, which permits carriers operating in study areas with less than 50,000 access lines to assign a greater portion of local switching costs to the interstate jurisdiction. *See* 47 C.F.R. §§ 54.301, 54.305.

[294] *See 1984 Joint Board Recommended Decision*, 49 Fed. Reg. 48325 at para. 66; *Order Adopting Recommendation*, 50 Fed. Reg. 939 at para. 1.

[295] *See, e.g., Petition for Waivers Filed by Columbine Telephone Company, Inc., Silver Star Telephone Company, Inc., and U S WEST Communications, Inc., Concerning Section 61.41(c)(2) and 69.3(e)(11) and the Definition of "Study Area" Contained in the Part 36 Appendix-Glossary of the Commission's Rules*, AAD 96-169, Memorandum Opinion and Order, 12 FCC Rcd 3622, 3627-28 para. 12 (Acc. Aud. Div. 1997) (*Columbine Telephone Company*); *US West Communications, Inc. and Nemont Cooperative, Inc., Project Telephone Company, and Valley Telecommunications, Inc., Joint Petition for Waiver of the Definition of "Study Area" contained in Part 36, Appendix-Glossary of the Commission's Rules and Petition for Waiver of Sections 61.41(c) and 69.3(e)(11) of the Commission's Rules*, AAD 93-87, Memorandum Opinion and Order, 9 FCC Rcd 721, 723 paras. 14-15 (Com. Car. Bur. 1994).

[296] *See, e.g., Columbine Telephone Company*, 12 FCC Rcd at 3628 para. 12.

[297] *See MAG NPRM*, 16 FCC Rcd at 464 para. 12.

[298] *See* ASCENT Comments in CC Docket No. 00-256 at 6; WorldCom Comments in CC Docket No. 00-256 at 17-18.

113. *Transfer of Above-the-Cap Support with Acquired Exchanges*. We conclude that above-the-cap support, such as safety valve support or safety net additive support, should not transfer with acquired exchanges.[299] Rather, subsequent acquiring carriers will have an opportunity to qualify for safety valve support based on their own costs for the acquired exchanges.[300] The subsequent acquiring rural carrier will be permitted to receive safety valve support representing up to 50 percent of any positive difference between the rural carrier's index year expense adjustment and subsequent year expense adjustments. To allow otherwise would be to relieve the subsequent acquiring rural carrier of the requirement that they make new investments in rural infrastructure in order to receive safety valve support.[301] This conclusion also is consistent with our decision not to permit rural carriers to qualify for safety net additive support for acquired exchanges.[302]

114. *Safety Valve Support for Competitive Study Areas*. We agree with the Rural Task Force's example that per-loop equivalent amounts of safety valve support should be portable to competitive eligible telecommunications carriers. According to the principle of competitive neutrality adopted by the Commission and recommended by the Joint Board, universal service support mechanisms and rules should neither unfairly advantage nor disadvantage one provider over another.[303] Consistent with this principle, the Commission implemented the universal service principles in section 254 of the Act to ensure that universal service support is "portable," in essence, available to all competing eligible telecommunications carriers.[304] We therefore conclude that per-loop equivalents of safety valve support should be portable to competitive eligible telecommunications carriers.

115. Consistent with our decision in section IV.C.3. below, we also conclude that safety valve support should not be "frozen" when a competitive eligible telecommunications carrier enters a study area. In its *Recommended Decision*, the Joint Board asks the Commission to consider whether safety valve support is frozen when a competitive eligible telecommunications carrier enters the study area, just as high-cost loop support would be frozen when a competitive eligible telecommunications carrier enters the incumbent's service area.[305] We believe that such an approach, which would freeze per-line safety valve support upon competitive entry in a study area, would unduly dissuade investment in new infrastructure. Under such an approach, the rural incumbent local exchange carrier would receive the same fixed amount of per-line safety valve support regardless of how much it invests in its telecommunications infrastructure. In this regard, affected carriers would be relieved of the requirement that they demonstrate that they have made new investment in rural infrastructure. We believe that such concerns outweigh the potential that per-line support amounts might escalate over time as incumbent carriers lose lines to competitors.[306]

116. *Reporting Requirements for Carriers with Transferred Exchanges*. In order to ensure that rural carriers receive the appropriate amount of high-cost support for acquired and existing exchanges, companies incorporating acquired exchanges into existing study areas consistently have been required to submit, as part of their universal service data submission in accordance with section 36.611

[299] *See Joint Board Recommended Decision* at para. 16.

[300] *See, e.g.*, CUSC Comments at 6; NECA Comments at 10.

[301] *See* Rural Task Force Recommendation at 29-30.

[302] *See supra* discussion at para. 106.

[303] *See First Report and Order*, 12 FCC Rcd at 8801-02 paras. 46-48, 8932-34 paras. 286-90.

[304] *See* 47 C.F.R. § 54.307; *see also First Report and Order*, 12 FCC Rcd at 8932, para. 287.

[305] *See Joint Board Recommended Decision* at para. 16.

[306] *See infra* discussion at para. 129.

of our rules, a schedule showing their methodology for excluding the costs associated with the acquired exchanges from the costs associated with their pre-acquisitions study areas.[307] To receive safety valve support, rural telephone companies also will need to segregate costs associated with the operation of acquired and existing exchanges in order for USAC to ultimately determine an acquiring carrier's eligibility for such support. We therefore clarify that rural telephone companies that incorporate acquired exchanges into existing study areas should exclude the costs associated with the acquired exchanges from the costs associated with the pre-acquisition study areas in annual universal service data submissions used to determine eligibility for high-cost loop support. Acquiring rural carriers shall separately provide the information listed in section 36.611 of our rules for both acquired and existing exchanges, as if these two categories of exchanges constitute separate study areas.

117. Consistent with the Rural Task Force's proposal, we also clarify that, once relevant regulatory approvals are obtained and the transaction is closed, the rural carrier shall provide written notice to USAC that they have acquired access lines that may become eligible for safety valve support.[308] Rural carriers also shall provide written notice to USAC of when their index year has been established for purposes of calculating eligibility for safety valve support. Such notifications will assist USAC in the administration of the safety valve mechanism.

118. USAC will then determine whether acquired exchanges qualify for safety valve support based on expense adjustments calculated by NECA in accordance with section 36.631 of the Commission's rules.[309] Once USAC determines that an acquired exchange does indeed satisfy the requirements for safety valve support, the amount of support in the qualifying year will be up to 50 percent of any positive difference between the rural carrier's index year expense adjustment and subsequent year expense adjustments, subject to the limitations described above.

119. *Retroactive Application of Safety Valve.* We decline to apply the safety valve mechanism retroactively to all carriers currently operating exchanges subject to section 54.305 of our rules.[310] The retroactive application of the safety valve mechanism would provide additional support for rural carriers with acquired exchanges, with no assurance that such support would be used to increase investment in rural infrastructure or reduce customer rates. We also note that the retroactive application of the safety valve mechanism was not included in the Rural Task Force's principles for providing support to exchanges acquired by rural carriers or in the Rural Task Force's example of a safety valve mechanism. We therefore will not apply the safety valve mechanism retroactively. We will, however, permit carriers currently operating exchanges subject to section 54.305 of our rules to receive safety valve support on a going-forward basis for new investments in the acquired exchanges. Carriers currently operating exchanges subject to section 54.305 of our rules may qualify for safety valve support for acquired exchanges in accordance with the procedures described above.[311] For example, a carrier that will operate acquired exchanges subject to section 54.305 for a full year by June 30, 2001, would

[307] *See, e.g., ATEAC, Inc., Alaska Telephone Company, Arctic Slope Telephone Association Cooperative, Inc., Interior Telephone Company, Inc., Mukluk Telephone Company, Inc., and United-KUC, Inc., Petition for Waiver of the Definition of "Study Area" Contained in Part 36, Appendix-Glossary of the Commission's Rules*, DA 01-101, at para. 8 (Acc. Pol. Div. rel. Jan. 17, 2001).

[308] Consistent with the 254(e) certification requirements we adopt today, state commissions shall certify that a carrier's use of safety valve support is consistent with section 254(e). *See infra* para. 187.

[309] *See* 47 C.F.R. § 36.631.

[310] *See, e.g.,* CenturyTel Comments at 6; Iowa Telecom Reply Comments at 4; NTCA Comments at 6; *but see* WorldCom Reply Comments at 12.

[311] *See supra* discussion at paras. 99-105.

establish its index year expense adjustment by filing a quarterly update on December 30, 2001, in accordance with section 36.612 of our rules with cost data for the first six months of 2001 and the last six months of 2000. This conclusion is consistent with our decision to provide safety valve support to other rural carriers acquiring exchanges from unaffiliated carriers.

3. Support in Study Areas with Competitive Eligible Telecommunications Carriers

a. Background

120. The Rural Task Force proposed that high-cost loop support be frozen on a per-line basis in rural carrier study areas where a competitive eligible telecommunications carrier initiates service.[312] As discussed below, the purpose of this proposal is to prevent excessive fund growth following competitive entry.[313] Under the Rural Task Force's recommended approach, frozen per-line support would be calculated based on the incumbent rural carrier's cost and line count data for the 12-month period prior to competitive entry. The incumbent and the competitive carrier would receive the same frozen support amount for each line served within the study area, subject to the disaggregation plan established for the study area, if any. Frozen per-line support would be adjusted annually by the rural growth factor, rather than for changes in costs. It would be subject to the indexed cap on high-cost loop support. In addition, incumbent rural carriers could request additional support to recover the costs of catastrophic events affecting their ability to provide supported services. Any adjustments to the frozen per-line support amount would apply equally to competitive carriers.

121. The Joint Board stated that, although it agreed with this proposal, "it is unclear how the high-cost loop fund cap would account for frozen carrier support."[314] The Joint Board also stated that "[t]he Commission should seek further input on the impact of 'catastrophic' support provided by other sources such as insurance, Rural Utilities Service loans, and federal or state emergency management relief."[315]

122. The Rural Task Force also raised concerns about frequency of reporting and the interval between the provision of service and receipt of support in competitive study areas.[316] The Rural Task Force recommended that this interval "should be as short as technically and administratively feasible to ensure provision of universal service."[317] To ensure that carrier data is "sufficiently sensitive to mid-period competitive activity[,]" it also proposed that support be distributed based on line count data for "the average of the quarter (*i.e.*, beginning of quarter plus end of quarter divided by two)."[318]

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312 Rural Task Force Recommendation at 25-26. This proposal does not apply to LTS, LSS, or other forms of federal universal service support. *Id.*

313 *See infra* para. 125.

314 *Recommended Decision* at para. 17.

315 *Id.*

316 Rural Task Force Recommendation at 38; *see Competition and Universal Service: Rural Task Force White Paper 5* (Sept. 2000) (visited May 2, 2001) <http://www.wutc.wa.go/rtf> at 21-22 (*White Paper 5*).

317 Rural Task Force Recommendation at 38.

318 *Id.* ("continuing support for the [incumbent] for a whole period when it is not serving the customer for the whole period, coupled with the failure to compensate the [competitor] for the portion of the period that it is providing service may constitute a barrier to entry for the [competitor]"). Under the current rules, carriers report lines served as of the end of the relevant reporting period. *See* 47 C.F.R. §§ 36.612, 54.307.

b. Discussion

123. *Proposal to Freeze High-Cost Loop Support.* Based on consideration of the record in this proceeding, we decline at this time to adopt the Rural Task Force's proposal to freeze high-cost loop support upon competitive entry in rural carrier study areas. As discussed below, the purpose of this proposal is to prevent excessive growth in the universal service fund as a result of an incumbent carrier's loss of lines to a competitive eligible telecommunications carrier. The likelihood of this harm occurring in the immediate future is speculative, however, and in some instances the proposal may increase support levels. Moreover, the proposal has significant drawbacks, including administrative complexity and disincentives to infrastructure investment by rural carriers. We conclude, therefore, that adoption of the Rural Task Force's proposal is not warranted at this time.

124. We recognize, however, that, as competition develops in high-cost areas and rural incumbent carriers lose lines to competitors, excessive fund growth may occur. We therefore seek comment in the attached Further Notice on possible alternative measures to address this potential issue.[319] During this proceeding, we intend to closely monitor the impact on the fund of competitive entry in rural carrier study areas to ensure that the fund remains specific, predictable, and sufficient consistent with section 254.[320]

125. In its comments, the Rural Task Force explains that the purpose of this proposal is to prevent excessive fund growth following competitive entry.[321] Due to the nature of telecommunications as an industry with high fixed costs, an incumbent carrier's loss of subscriber lines to a competitive eligible telecommunications carrier is unlikely to be offset by a corresponding reduction in its total embedded cost of service.[322] If the incumbent's lines decreased while its fixed costs remained roughly the same, its per-line costs would increase. Consequently, the incumbent would be entitled to higher support per line.[323] Because the higher per-line support amount would be available to both the incumbent and the competitor for each line served under our portability rules, the size of the fund could grow significantly as competition increases, particularly if there is a net increase in the total number of lines served in the study area.[324] The indexed cap on high-cost loop support would not check this growth fully,

[319] *See infra* paras. 209-211.

[320] To facilitate such monitoring and prevent overpayment of support, as well as to address Rural Task Force concerns about frequency of reporting, we also adopt a requirement that eligible telecommunications carriers in competitive study areas file updated line counts on a regular quarterly basis. *See infra* paras. 132-133.

[321] *See* Rural Task Force Comments at 7-8; *see also* AT&T Comments at 14-15; NTCA Comments at 11, 13-14; John Staurulaukis, Inc. Comments at 9-10; Telecom Consulting Associates Comments at 6. The Rural Task Force Recommendation did not explain the purpose of its proposal to freeze high-cost loop support in the Recommendation. The Rural Task Force addressed the purpose in its Comments, however, and discussed related issues in its *White Paper 5*, which was incorporated by reference into the Recommendation. *See White Paper 5* at 19, 21, n.35.

[322] *See id.* We express no opinion on the issue of stranded costs, regarding which the Rural Task Force did not reach agreement. *See* Rural Task Force Recommendation at 39. As stated below, few competitive carriers currently receive high-cost loop support for service to rural carrier study areas, and there is no evidence in the record before us projecting specific levels of competitive entry in the future. *See infra* n.326.

[323] *See* 47 C.F.R. §§ 36.601, *et. seq.*

[324] *See White Paper 5* at 21, n.35 ("For example, . . . if an ILEC served 1,000 lines and received $1,000 in monthly universal service support, this would equate to $1 of support per line. This amount would be available to any CETC that captured a line from the ILEC. If the ILEC lost 500 lines to competitors, but the ILEC's support based on embedded costs still amounted to $1,000 per month, the per line support available to the ILEC and CETC would double to $2 per line to the ILEC and CETC."). Under the Commission's portability rules, a competitive (continued....)

because support received by competitive carriers currently is not included within the cap. Thus, by recommending that support be frozen on a per-line basis after competitive entry, and subsequently adjusted by a predetermined growth factor, the Rural Task Force sought to prevent excessive fund growth.

126. We are not convinced, however, that it is necessary to adopt the Rural Task Force's proposal at this time. The proposal may be of limited benefit in serving its intended purpose, and under some circumstances may contribute to fund growth rather than limiting it. First, the possibility of excessive fund growth is speculative. The harm the Rural Task Force sought to avoid arises only if a competitive eligible telecommunications carrier captures subscriber lines from an incumbent, not if it adds new lines. In addition, the competitive carrier presumably must capture a meaningful percentage of lines from the incumbent within the study area,[325] but it is unclear what this threshold is, or how often it is likely to be reached during the five-year period in which the Rural Task Force plan is in effect.[326] Second, the indexed cap on the high-cost loop fund will operate as a check on excessive fund growth to a certain extent. The support received by incumbent rural carriers is subject to the cap, and a competitive carrier will receive no more support on a per-line basis than the incumbent receives.[327] Moreover, in years the cap is not triggered, frozen per-line support, as proposed by the Rural Task Force, actually might exceed the support that carriers would receive based on the incumbent's embedded costs. Embedded costs per line generally decrease with line growth, but frozen per-line support would increase annually by the rural growth factor. Thus, if the incumbent's lines increase and the cap is not triggered, it may recover more frozen support than it would based on its embedded costs.[328] The potential for excess support is increased because the rural growth factor includes annual rural line growth, so that its application to individual lines receiving frozen support would result in double counting of line growth.[329]

127. We are further concerned that the Rural Task Force's proposal would require us to

(Continued from previous page)
carrier receives the same support for each line served that the incumbent carrier would receive, based on the incumbent's embedded costs. 47 C.F.R. § 54.307. Two commenters argue that these rules should be modified to provide support to competitive carriers based on their own costs. *See* NTCA Comments at 12, Fred Williamson & Assoc. Comments at 6-7. The Commission previously rejected this argument, and we decline to reconsider it at this time. *See First Report and Order*, 12 FCC Rcd at 8944-45 paras. 311-13.

[325] *See* John Staurulaukis, Inc. Comments at 9-10 (proposing a threshold requirement that a competitive carrier serve five or ten percent of the total lines within a study area); Telecom Consulting Associates Comments at 7-8 (proposing ten percent threshold); Townes Telecommunications Comments at 3 (proposing threshold of ten percent or more).

[326] *See* Rural Task Force Recommendation at 38 ("the competitive inroad of the [competitive eligible telecommunications carrier] usually begins with a slow ramp-up as customers are signed on for services"). We note that a total of six competitive carriers nationwide currently receive high-cost loop support for service to both rural carrier and non-rural carrier study areas. *See* Federal Universal Service Support Mechanisms Fund Size Projections and Contribution Base For the Second Quarter 2001, Appendix HC 1 (Universal Service Administrative Company, Feb. 6, 2001). There is no evidence in the record before us projecting specific levels of competitive entry in the future.

[327] *See* 47 C.F.R. § 54.307; *see also* Rural Task Force Comments at 7-8 (Rural Task Force plan guards against excessive fund growth as a result of increasing competition in part by recommending retention of the cap).

[328] Under the Rural Task Force proposal, if the cap is triggered, an incumbent rural carrier would receive no more total frozen per-line support than it would have received under the cap, and its competitor's per-line support would be limited accordingly. *See* Rural Task Force Recommendation at 26; Rural Task Force Comments at 8.

[329] *See* Texas Commission Comments at 6. The Rural Task Force addresses this issue in its comments, but rather than refuting that such double counting would occur, it simply clarifies that the cap would constrain the overall growth of frozen per-line support. Rural Task Force Comments at 7-8.

implement complex and administratively burdensome regulations. For example, we would have to impose a new reporting requirement on rural carriers to implement the proposal that frozen per-line support be calculated based on cost and line count data for the 12 months prior to the quarter in which the competitive carrier initiates service.[330] Despite the fact that their support would be frozen, rural carriers would have to continue filing annual cost data, because the proposal that frozen support be subject to the cap would require comparison of a carrier's total frozen per-line support to its total capped support based on embedded costs.[331]

128. Furthermore, new administrative requirements and procedures would be necessary to implement the Rural Task Force's proposal to allow incumbent rural carriers to request increased support to recover the costs of catastrophic events affecting their ability to provide supported services.[332] To verify the need and eligibility for increased support under this proposal, and to address the concerns of the Joint Board and others that such support could be used as a substitute for insurance or other sources of funding,[333] we would have to impose additional reporting requirements on rural carriers, and/or adopt potentially cumbersome procedures for state certification.[334] Moreover, to avoid undermining the original purpose of fixing support, some procedure would be necessary to ensure that a carrier's need for increased per-line support is due to a catastrophic event rather than the loss of lines to a competitor. These examples illustrate the regulatory burdens and difficulties entailed in the Rural Task Force's recommended approach.

129. More importantly, freezing support in competitive study areas may have the unintended consequence of discouraging investment in rural infrastructure, contrary to the fundamental goals of the Rural Task Force plan.[335] A number of commenters argue that carriers in competitive study areas will have reduced incentives to invest in infrastructure, because they will be unable to obtain additional support for such investments once their high-cost loop support is frozen.[336] One commenter states that

[330] Currently, rural carriers are only required to file such data annually by July 31st for the prior calendar year, and may file quarterly updates on September 30th, December 30th, and March 30th. 47 C.F.R. §§ 36.611, 36.612.

[331] *See* Rural Task Force Recommendation at 26; *see also supra* para. 59.

[332] Under the Rural Task Force proposal, additional support would be available to recover the costs of hurricanes, floods, and other events that are declared to be natural disasters by Federal or state regulatory authorities, and that directly affect the provision of supported services within a study area. Rural Task Force Recommendation at 26. As a number of commenters point out, this provision would merely place rural carriers in the same position as they would be if their support were not frozen, for such costs are now recoverable from universal service support to the extent that they are not covered by insurance. *See* Innovative Telephone Comments at 20-21; NRTA, OPASTCO, & USTA Comments at 5; NTCA Comments at 14-15; Rural Task Force Comments at 9; Virgin Islands Commission Comments at 6.

[333] *See Recommended Decision* at para. 17; California Commission Comments at 14; CUSC Comments at 7; Florida Commission Comments at 6-7; Sprint Comments at 2-3.

[334] *See* Texas Commission Comments at 7 ("state regulators should participate in the decision on whether the carrier should receive additional funding as a result of catastrophic events").

[335] *See Recommended Decision* at para. 11 (Rural Task Force sought to provide rural carriers with "stability . . . for planning their investments over the next several years" and "increased incentives to invest in new infrastructure and technologies.").

[336] *See* Evans Tel. Co., et.al.. Comments at 7; Interstate Telecom Group Comments at 8; NTCA Comments at 11, 13-14; John Staurulaukis, Inc. Comments at 9-10; Telecom Consulting Associates Comments at 6-7; Townes Telecommunications Comments at 2-3; *see also* Alliance of Incumbent Rural Telephone Companies Reply Comments in CC Docket No. 00-256 at 9.

fixing support could interfere with the normal, "cyclical" investment patterns of small rural carriers.[337] In addition, some commenters argue that the Rural Task Force's proposal is over-inclusive and would distort incentives for competitive entry, because support would be frozen regardless of how many subscriber lines a competitive carrier serves within a study area, whether it captures or adds lines, or whether it serves only a limited geographic portion of the study area.[338] Furthermore, we are concerned that adoption of this proposal could hinder competitive entry in rural carrier study areas, again contrary to a fundamental goal of the Rural Task Force plan.[339] The Competitive Universal Service Coalition, although it does not oppose the proposal, raises concerns that it could increase the difficulty for new entrants by creating an additional incentive for incumbents to oppose designation of a new eligible telecommunications carrier.[340] Indeed, one carrier recently filed comments with the Commission opposing a petition for such status, in part, on the ground that the resulting freeze of support (assuming the Rural Task Force proposal were adopted) would "severely constrain" its ability to upgrade plant and provide quality service in the area.[341]

130. In sum, we conclude that, at this time, the costs of adopting the Rural Task Force's proposal to freeze high-cost loop support in competitive study areas would significantly outweigh the potential benefits. Based on our examination of the present record, we believe that the proposed solutions to the problems identified above (*e.g.*, an expedited waiver process, a market-share threshold requirement, or freezing support only in geographic areas served by the competitive carrier) would compound the administrative complexity of the Rural Task Force's recommended approach without resolving the problems. For example, a simple market-share threshold requirement would fail to target study areas where the harm sought to be avoided is most likely to occur, because it could not distinguish captured from new subscriber lines.[342] Similarly, freezing support only in limited portions of a study area would complicate the administration of a frozen support provision without reducing the likelihood of such harm.[343] We conclude, therefore, that adoption of this proposal is not warranted.

131. We intend, however, to closely monitor the impact of competitive entry in rural carrier

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[337] Townes Telecommunications Comments at 2-3 ("Unlike larger carriers that are continuously upgrading their exchanges on a rotating basis, many smaller carriers do not have a continuous investment program. Rather, small carriers are more likely to have a 'cyclical' investment pattern and upgrade the major portion of their network on a periodic basis, such as once every fifteen (15) years.").

[338] *See* Interstate Telecom Group Comments at 8-9; John Staurulaukis, Inc. Comments at 9-10; Telecom Consulting Associates Comments at 9; Townes Telecommunications Comments at 4; Western Alliance Comments at 9-10.

[339] *See Recommended Decision* at para. 11 (Rural Task Force Recommendation "seeks to encourage competitors to enter high-cost areas.").

[340] *See* CUSC Comments App. A at 16-17 ("If the Commission adopts this recommendation, . . . it should also make perfectly clear that [the freezing of high-cost loop support] is not a basis for denying a competitive entrant's petition for ETC designation."); *see* 47 U.S.C. § 214(e)(2), (e)(5).

[341] Smith Bagley, Inc. Petitions for Agreement to Redefine the Service Areas of Navajo Communications Company, Citizens Communications Company of the White Mountains, and Century Tel of the Southwest, Inc. on Tribal Lands within the State of Arizona, CC Docket No. 96-45, Comments of Table Top Tel. Co., Inc., at 4-5 (filed Mar. 16, 2001).

[342] *See* Rural Task Force *White Paper 5* at 17 ("Dealing with 'captured' and 'new' lines may create administrative problems and the need to track customers from one [carrier] to another").

[343] If support were frozen in a limited portion of a study area and the incumbent carrier lost a significant number of lines there, per-line support levels would escalate even more quickly in the remainder of the study area, because embedded costs are calculated on a study-area basis. *See generally* 47 C.F.R. § Part 36.

study areas to ensure that the fund remains specific, predictable, and sufficient consistent with section 254. We note that the quarterly reporting requirements we adopt below for rural incumbent carriers serving study areas in which a competitive eligible telecommunications carrier has been designated will enable us to closely monitor any excessive fund growth that may result from incumbent line loss to a competitive eligible telecommunications carrier.[344]

132. *Frequency of Reporting and Lag in Support.* As stated above, the Rural Task Force also raised concerns about frequency of reporting and the interval between the provision of service and receipt of support in competitive study areas.[345] With regard to frequency of reporting, the Rural Task Force observed that the number of lines served by carriers in competitive study areas "may change in a dynamic manner."[346] Rural carriers and their competitors currently are required to file line count data annually, and may file quarterly updates on a voluntary basis.[347] Quarterly updates are required in non-rural carrier study areas.[348] Under the current rules, if an incumbent rural carrier does not update its line count data but its competitor does, the competitor's more recent data may include lines captured from the incumbent since the incumbent's last filing. Thus the incumbent may continue to receive support for the year based on an overstated number of lines.

133. To prevent an overpayment of support, and to address the Rural Task Force's concerns, we will require the filing of line count data on a regular quarterly basis upon competitive entry in rural carrier study areas. By synchronizing such data, this requirement will ensure that only one carrier receives support for each line served.[349] In addition, it should allow closer monitoring of the impact of competitive entry, because it will reveal any loss or gain of subscriber lines by competing carriers on a quarter-to-quarter basis. We believe that this requirement will not significantly increase reporting burdens for the affected carriers because, although they will be required to report data more frequently, the data will be limited to changes in the number of lines that they served during a quarter. We emphasize that this requirement will not apply in rural carrier study areas in which an eligible telecommunications carrier has not been designated.[350]

134. We agree with the Rural Task Force's general recommendation that the interval between the provision of service and receipt of universal service support should be as short as possible.[351] The Commission previously concluded that portability of support facilitates the entry of competition in areas served by rural carriers.[352] Because support represents an important source of funds for the operation of an exchange with high loop costs, the interval between the reporting of costs and receipt of support based

[344] *See infra* paras. 132-133.

[345] Rural Task Force Recommendation at 38.

[346] *Id.*

[347] 47 C.F.R. §§ 36.612, 54.307.

[348] *Id.*

[349] *See Ninth Report and Order*, 14 FCC Rcd at 20480-81 para. 92 (mandating quarterly reporting for carriers serving non-rural study areas "[t]o ensure that [universal service support is] based on data from the same reporting periods, and to ensure equitable, non-discriminatory, and competitively neutral treatment of incumbent LECs and competitive eligible telecommunications carriers").

[350] For purposes of this requirement, "competitive" will mean that a competitive eligible telecommunications carrier has initiated service within the study area and has reported line count data to the Administrator pursuant to section 54.307(c) of the Commission's rules. 47 C.F.R. § 54.307(c).

[351] Rural Task Force Recommendation at 38.

[352] *First Report and Order*, 12 FCC Rcd at 8944.

on those costs may discourage competitive entry. Nevertheless, some interval is necessary for administrative reasons.[353] To ensure that the interval between the submission of data and receipt of support is as short as possible in rural carrier study areas, we clarify that competitive eligible telecommunications carriers may submit initial line count data and receive support on a regular quarterly basis under section 54.307(c) of the Commission's rules.[354]

135. The Rural Task Force also recommended that support in competitive study areas be distributed based on line count data for "the average of the quarter (*i.e.*, beginning of quarter plus end of quarter divided by two)."[355] This recommendation appears to hold promise as a means of promoting the distribution of support on an equitable, non-discriminatory, and competitively neutral basis. As proposed, however, the Rural Task Force's recommended approach would impose additional reporting requirements, as carriers currently are required to report only line count data as of the end of the relevant reporting period.[356] The present record lacks evidence on the administrative burden that such requirements would impose, if any, or on whether alternative measures might avoid the need for such requirements. Moreover, we believe that any such measure should be applicable to all carriers, including those serving non-rural study areas. Therefore, we intend to address the Rural Task Force's proposal at a later date.

D. Disaggregation and Targeting of Support

1. Background

136. Under the existing embedded cost mechanism, federal universal service high-cost support for rural carriers is averaged across all lines served by a carrier within its study area. Thus, support on a per-line basis is the same throughout a study area even though the costs of serving customers in that study area likely vary. As a result, support in low-cost areas of the study area may exceed the cost of serving those areas while support in high-cost areas may be insufficient to offset the higher cost of serving those areas. Recognizing that support is portable, the Rural Task Force contends that this may create uneconomic incentives for competitive entry.[357] The Rural Task Force stated in its recommendation that the current distribution method must be modified to be consistent with the Act and the principle of competitive neutrality.[358]

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[353] For example, lag between the reporting of data and the payment of support is necessary to allow projection of funding requirements and collection of contributions based on such data. *See Ninth Report and Order*, 14 FCC Rcd at 20485 para. 100. In addition, an interval between the initiation of service and receipt of support by a competitive carrier is necessary to synchronize the filing schedules of incumbents and competitors, thereby ensuring equal, non-discriminatory, and competitively neutral treatment of all carriers. 47 C.F.R. §§ 36.612, 54.307; *see Ninth Report and Order*, 14 FCC Rcd at 20478 para. 87, 20480-81 para. 92.

[354] 47 C.F.R. § 54.307; *see Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Twentieth Order on Reconsideration, 15 FCC Rcd 12070, 12078 para. 18 (2000); CUSC Comments App. A at 12 (requesting clarification that competitive carriers "have the option to make both their initial line count report and subsequent reports at least quarterly"). We will amend section 54.307(c) to remove reference to an annual July 31st deadline.

[355] Rural Task Force Recommendation at 38. Under the current rules, carriers report lines served as of the end of the relevant reporting period. *See* 47 C.F.R. §§ 36.612, 54.307.

[356] *See id.*

[357] Under the Commission's portability rules a competitive eligible telecommunications carrier receives the same per-line level of high-cost support for lines that it captures from an incumbent carrier, as well as for any new lines it serves in high-cost areas. *See* 47 C.F.R. § 54.307.

[358] Rural Task Force Recommendation at 33.

137. As part of its proposal to reform the federal universal service support mechanism for rural carriers, the Rural Task Force proposed that rural carriers be permitted to depart from study area averaging and instead disaggregate and target per-line high-cost universal service support, including high-cost loop support, LTS, and LSS, into geographic areas below the study area level.[359] By doing so, per-line support would not be the same throughout a study area but would vary to reflect the cost of providing service in a particular geographic area within the study area. The Rural Task Force concluded that the disaggregation and targeting of support is necessary to eliminate the economic distortions that may result from the delivery of support on a uniform per-line basis under the current mechanism thereby reducing the possibility for arbitrage of universal service support resulting in shortfalls or windfalls to either incumbent carriers or competitive eligible telecommunications carriers. At the same time, however, the Rural Task Force stated that rural carriers need flexibility in the manner in which support is disaggregated and targeted in light of the widely varying characteristics and operating environments of rural carriers. Recognizing that a disaggregation and targeting system must meet the unique regulatory and competitive environments in each state, the Rural Task Force recommended a disaggregation system consisting of three paths. Carriers would be required to elect one of these paths within 270 days of the effective date of the order implementing rural high-cost reform.[360]

138. Path One would allow a carrier to certify to the state commission, or other appropriate regulatory authority, that it does not want to disaggregate support. The carrier's election of this path would become effective upon filing of the certification and remain in place for at least four years unless (1) the state commission or other appropriate regulatory authority requires, on its own motion or upon petition by an interested party, the disaggregation of support, or grants eligible telecommunications carrier status below the study area level; (2) there is a change in state or federal laws or regulations; or (3) there is a change in ownership. If any of these events occur, the carrier would be permitted to target support under one of the other two paths.

139. Path Two would be available to carriers that want state commission review and approval of a disaggregation plan.[361] A carrier that chooses this path, which places no constraints on the disaggregation plan, would file a disaggregation plan with the state commission, or other appropriate regulatory authority. The Rural Task Force contemplates that the regulatory authority would hold workshops, hearings, or other appropriate administrative proceedings in which interested parties may participate, and that the regulatory authority would issue an order, which would set out the targeting method, a description of the zones, and a per-line support amount for each category of support in each zone. The Rural Task Force proposed that the disaggregation plan, once approved, would be effective until the regulatory authority approves a new plan, but would remain subject to change or challenge at any time.

140. Path Three would permit carriers to self-certify a method of disaggregation with the state commission or other appropriate regulatory authority. The Rural Task Force proposed that carriers certify that the disaggregation plan complies with certain requirements. First, carriers must certify that support would be disaggregated to the wire center level or into no more than two cost zones per wire center. A different level of disaggregation would be permitted only if a state commission, previously determined that a different level of disaggregation is appropriate.[362] Second, if the appropriate regulatory

[359] *Id.* at 33-36. *See also Disaggregation and Targeting of Universal Service Support: Rural Task Force White Paper 6* (Sept. 2000) (visited May 2, 2001) <http://www.wutc.wa.gov/rtf> at 4-6 (*White Paper* 6).

[360] Rural Task Force Recommendation at 34-36.

[361] *Id.* at 35.

[362] *Id.* at 36.

authority has previously adopted a method of disaggregation, the carrier must certify that its plan uses the rationale previously adopted. Third, the carrier must certify that the plan uses a rationale for disaggregating support that is reasonably related to the cost of providing service for each cost zone within each disaggregated category of support (high-cost loop support, LSS and LTS). Fourth, if the plan uses a benchmark to determine support amounts, the benchmark must be generally consistent with how the total study area level of support is derived to compare the disaggregated costs for determining support for each cost zone. The certification filing must describe the rationale used, including the methods and data, and a discussion of how the plan complies with the self-certification guidelines.[363] If the plan uses a benchmark, the filing must explain what the benchmark is and how it was determined. The plan must show the per-line amount of support for each category of support in each zone.

141. The Rural Task Force proposed that a carrier's election of Path Three would become effective upon filing of the certification and remain in place for at least four years unless (1) the state commission or other appropriate regulatory authority requires, on its own motion or upon petition by an interested party, the disaggregation of support, or grants eligible telecommunications carrier status below the study area level; (2) there is a change in state or federal laws or regulations; or (3) there is a change in ownership.[364] At any time while in effect, the plan would be subject to complaint by interested parties before the appropriate regulatory authority on the grounds that the plan does not comply with the certification requirements proposed by the Rural Task Force. To the extent a plan is challenged, the Rural Task Force proposed that the relevant regulatory administrative procedures (including burden of proof allocation and availability of discovery) would apply to such complaints.

142. With regard to all three paths, the Rural Task Force also recommended that certain general requirements apply to each disaggregation plan.[365] First, the Rural Task Force recommended that relative per-line support relationships between disaggregation zones for each disaggregated category of support remain fixed over time (except as changes are allowed by the Path descriptions) and that such relationships be made publicly available. Second, the Rural Task Force recommended that, until a competitive eligible telecommunications carrier is certified in a study area, monthly payments to an incumbent carrier be made using current procedures based on total annual amounts for a study area divided by twelve. Third, when a competitive eligible telecommunications carrier is certified for a study area, per-line amounts to determine the competitive eligible telecommunications carrier's support should then be based on the incumbent carrier's then-current total support levels, lines, and disaggregated support relationships. Fourth, the Rural Task Force recommended that support per-line for each category of support for each disaggregation zone be determined such that the relative support relationships between zones would be maintained and that the product of all of the incumbent's lines for each cost zone multiplied by the per-line support for those zones would sum to the incumbent's total level of support. Fifth, the Rural Task Force recommended that per-line support amounts for each zone should be recalculated whenever the incumbent's total annual support amount changed using the changed support amounts and lines at that point in time. The Rural Task Force also recommended that the incumbent carrier's study area support available in total for a study area under the disaggregation method equal the total support available without disaggregation.

143. Finally, the Rural Task Force recognized that state commissions have the authority to determine whether more than one eligible telecommunications carrier should be designated in an area served by a rural carrier.[366] The Rural Task Force also recognized that, under section 214(e)(5) of the Act

[363] The Rural Task Force, however, does not propose that a carrier be required to file a complete cost study. *Id.*

[364] *Id.* at 35.

[365] *Id.* at 34.

[366] *Id.*

and the Commission's rules, carriers must seek approval from the Commission and the States, after taking into account recommendations of the Joint-Board, to change an eligible telecommunication carriers "service area" to a geographic area other than a rural carrier's study area.[367] The Rural Task Force recommended that the level of disaggregation of support be considered in determining whether to certify new eligible telecommunications carriers for a service area other than a rural carrier's entire study area.[368]

2. Discussion

144. We find that the Rural Task Force's disaggregation and targeting proposal achieves a reasonable balance between rural carriers' needs for flexibility and the Commission's goal of encouraging competitive entry. As discussed below, we agree with the Rural Task Force and the commenters that, as a general matter, support should be disaggregated and targeted below the study area level. At the same time, we agree with the Rural Task Force that, given the significant differences among rural carriers and the varying competitive environments among the states, there should be flexibility in the manner in which support is disaggregated and targeted for rural carriers. Accordingly, subject to certain modifications discussed below, we adopt generally the three paths for the disaggregation and targeting of high-cost universal service support proposed by the Rural Task Force. We also adopt the general requirements that the Rural Task Force proposed for all disaggregation plans.

145. We agree with the Rural Task Force and commenters that the provision of uniform support throughout the study area of a rural carrier may create uneconomic incentives for competitive entry and could result in support not being used for the purpose for which it was intended, in contravention of section 254(e).[369] Because support is averaged across all lines served by a carrier within its study area under the existing mechanism, the per-line support available throughout the study area is the same even though the costs throughout the study area may vary widely. As a result, artificial barriers to competitive entry in the highest-cost areas and artificial entry incentives in relatively low-cost portions of a rural carrier's study area are created. For example, support would be available to a competitor that serves only the low-cost urban lines, regardless of whether the support exceeds the cost of any of the lines. We conclude therefore that, as a general matter, support should be disaggregated and targeted below the study area level so that support will be distributed in a manner that ensures that the per-line level of support is more closely associated with the cost of providing service.[370]

146. While we recognize the benefits of disaggregating and targeting support, we also agree with the Rural Task Force's recommendation that there should be flexibility in the manner in which support is disaggregated and targeted for rural carriers. The Rural Task Force's multi-path system is premised on the proposition that, because of the diverse characteristics among rural carriers, there is not an adequate "one size fits all" approach that is workable for disaggregating support for rural carriers.[371]

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[367] *Id.* at 36.

[368] *Id.*

[369] *Id.* at 33-34, *White Paper* 6 at 4-5. *See, e.g.,* CUSC Comments App. A at 5; Ad Hoc Telecommunications User Committee Comments at 23; SDITC Comments at 8-9. *See also Ninth Report and Order,* 14 FCC Rcd at 20471 para. 71.

[370] This conclusion is consistent with our determination in the *Ninth Report and Order* that support for non-rural carriers should be targeted to avoid the uneconomic incentives created by the delivery of federal support to non-rural carriers on a uniform per-line basis. *Ninth Report and Order,* 14 FCC Rcd at 20471 para. 71, 20472-73 para. 75.

[371] Rural Task Force Recommendation at 33-34, *White Paper* 6 at 6-11.

As discussed above, there are over 1300 study areas served by companies defined as rural carriers.[372] The population of rural carriers reflects diverse operating characteristics and operating environments. We find that providing rural carriers flexibility in the methods of disaggregation and targeting is a reasonable approach to address the significant diversity among such carriers. By providing carriers such flexibility, a carrier may better match the disaggregation and targeting methodology to its costs and geographic characteristics and the competitive and regulatory environment in the state in which it operates.

147. Similarly, we recognize that in some specific instances, as described below, the factors that militate in favor of disaggregation may not be present. We find that requiring the disaggregation and targeting of support in these instances would serve no rational economic purpose. We conclude that the multi-path system proposed by the Rural Task Force addresses the distinct needs of rural carriers and, therefore, we adopt the three paths recommended by the Rural Task Force for the disaggregation and targeting of support by rural carriers, subject to certain modifications discussed in greater detail below. We direct carriers to choose within 270 days of the effective date of the rules adopted in this Order one of these three paths.[373] Carriers failing to do so will not be permitted to disaggregate and target support unless ordered to do so by a state commission or other appropriate regulatory authority either on its own motion or in response to a request of an interested party.

148. First, we adopt with modifications Path One, which provides that a carrier may choose not to disaggregate. Path One is intended to address those instances where a carrier determines that, given the demographics, cost characteristics, and location of its service territory, and the lack of a realistic prospect of competition, disaggregation is not economically rational.[374] For example, a carrier may serve only a few lines or a very small study area with little geographic variability. We find that permitting such a carrier not to disaggregate support is appropriate.[375] We recognize commenters' concerns that a carrier may choose not to disaggregate and target support for anti-competitive reasons.[376] We find, however, that because a state nonetheless may require disaggregation, either on its own motion or that of an interested party, sufficient safeguards are in place to ensure that if disaggregation and targeting of support is warranted, the carrier will be required to do so. Indeed, if a state receives a request to require a carrier to disaggregate and target support under any of the paths adopted herein, we expect that it will be guided in making a determination on the request by our view that support should generally be disaggregated and targeted in a manner that the per-line level of support is more closely aligned with the cost of providing service.

149. We find, however, that it is necessary to modify Path One in order to minimize the risk of gaming and to ensure a competitive entrant certainty with regard to the level of available per-line support. As proposed by the Rural Task Force, a carrier would have the option to change to a different

[372] *See supra* at para. 13.

[373] In adopting this mechanism we recognize, as did the Rural Task Force, that in limited instances certain carriers may not be subject to the jurisdiction of a state, *e.g.*, tribally-owned carriers. In such limited circumstances, the Commission would be the appropriate regulatory authority for the administration of the disaggregation and targeting of support by such carriers.

[374] *See* Rural Task Force *White Paper* 6 at 10-11.

[375] *See* Texas Commission Comments at 7 (recognizing that it may be reasonable to allow some small rural carriers to not disaggregate and target support under Path One because of their size and cost characteristics.) The Texas Commission also encouraged the Commission to consider whether "larger rural carriers" should be permitted to elect Path One but did not offer additional support for its proposition. *Id.*

[376] *See, e.g.*, CUSC Comments App. A at 7-8.

path if a competitor is granted eligible telecommunications carrier status below the study area level, a change in state or federal regulations occurs, or a change in ownership occurs. We are concerned that permitting a carrier to disaggregate after election of Path One under these circumstances presents the opportunity for gamesmanship and undermines the certainty necessary to encourage a competitive eligible telecommunications carrier to enter a market.[377] Accordingly, we find that once an incumbent elects not to disaggregate under Path One, it shall remain in effect until a state commission or appropriate regulatory authority requires, on its own motion, or upon petition by an interested party, including the affected incumbent, a change to a different disaggregation and targeting methodology. We conclude that, by permitting a carrier to change from this path only upon the approval of a state commission or appropriate regulatory authority, a competitive eligible telecommunications carrier is provided sufficient certainty with regard to the level of available per-line support. Moreover, we believe that because a carrier's ability to change to a different disaggregation methodology after it elects Path One is constrained, a carrier is less likely to elect Path One for anti-competitive reasons.

150. Second, we adopt Path Two, which provides that a carrier may disaggregate based on a plan that has been approved by the appropriate regulatory authority. Because there are no constraints on disaggregation and targeting proposals under Path Two, a carrier could disaggregate and target support to multiple levels below a wire center, a disaggregation and targeting method can be tailored with precision, subject to state approval, to the cost and geographic characteristics of the carrier and the competitive and regulatory environment in which it operates.[378] Thus, this path provides the utmost flexibility in the development of a disaggregation plan, but at the same time provides for regulatory approval to ensure that the methodology implemented is competitively neutral.

151. Third, we adopt the Path Three self-certification process that permits carriers to choose (1) a disaggregation plan of up to two cost zones per wire center, or (2) a disaggregation plan that complies with a prior regulatory determination. We find that permitting carriers to self-certify its disaggregation and targeting plan to the state reduces the administrative burdens on carriers and states, and facilitates the rapid implementation of disaggregation and targeting plans. We believe that the certification requirements proposed by the Rural Task Force will ensure that the disaggregation plans are cost-based and consistent with the principles of competitive neutrality. For example, a carrier must provide the state and USAC with a description of the rationale used to disaggregate support, including the methods, and data, and a discussion of how the plan complies with the self-certification guidelines.[379] In addition, if the plan uses a benchmark, it must be generally consistent with how the total study area level of support for each category of costs (high-cost loop support, LSS, and LTS) is derived, to enable a competitor to compare the disaggregated costs used to determine support for each zone.[380] Moreover, the plan must show a per-line amount of support for each element in each disaggregation zone. We find that, given these requirements, the self-certification process strikes a reasonable balance between providing flexibility and ensuring that support is disaggregated in a competitively neutral manner.

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[377] For example, a carrier could choose not to disaggregate then subsequently elect to do so under Path Two or Path Three when a competitor is granted eligible telecommunications carrier status below the carrier's study area level for the purpose of having lower per-line support levels established for the competitor's service area.

[378] Under this path, a carrier could choose among any of the various methods of disaggregation, such as use of a proxy model, long-run incremental cost studies, or the use of density factors to disaggregate support.

[379] A complete cost study is not required. *See* Rural Task Force Recommendation at 36.

[380] We recognize that carriers could choose a benchmark based on affordability or averaged rates. *See Wyoming Public Service Commission Petition for Waiver of Targeting Requirements Found in Section 54.309 and 54.311 of the Commission's Rules*, CC Docket No. 96-45, DA 01-612 (rel. Mar. 9, 2001). We require carriers to provide detailed information explaining what the benchmark is and how it was determined.

152. We disagree with those commenters that assert that permitting carriers to self-certify to a disaggregation plan creates too great an opportunity for the incumbent carrier to manipulate the disaggregation and targeting of support in an anti-competitive manner.[381] We note that the states will play a significant role in the disaggregation and targeting of support. Under the plan we adopt here, a self-certified plan is subject to complaint by interested parties before the appropriate regulatory authority on the grounds that it does not comply with the self-certification requirements, which we believe ensure that the disaggregation plan will not be anti-competitive. Moreover, the state or appropriate regulatory authority may require on its own motion at any time the disaggregation of support in a different manner. We believe that state oversight in the administration of the disaggregation scheme will safeguard against the anti-competitive manipulation of the disaggregation and targeting of support.

153. To further ensure that Path Three is employed in a pro-competitive manner, however, we find that additional regulatory oversight of any proposed changes to the disaggregation plan is necessary. As proposed by the Rural Task Force, a carrier has the option to change to a different path and alter its existing disaggregation plan if a competitor is granted eligible telecommunications carrier status below the study area level, a change in state or federal regulations occurs, or a change in ownership occurs. As discussed above with regard to Path One, we are concerned that permitting a carrier this latitude may invite gaming by incumbent carriers and undermines the certainty necessary to encourage a competitive eligible telecommunications carrier to enter a market. Accordingly, we find that, once an incumbent elects a disaggregation plan under Path Three, the plan shall remain in effect until a state commission or appropriate regulatory authority requires, on its own motion, or upon petition by an interested party, including the affected incumbent, a change to a different disaggregation and targeting methodology. We conclude that by permitting a carrier to change from this path only upon the approval of a state commission or appropriate regulatory authority, a competitive eligible telecommunications carrier is provided greater certainty as to the level of available per-line support. Moreover, we believe that because a carrier's ability to move to a different path is constrained, a carrier is less likely to elect this path for anti-competitive reasons.

154. As discussed above with regard to Paths One and Three, by requiring a rural carrier to retain its disaggregation plan unless the state commission approves any changes to the plan, the disaggregation rules adopted in this Order will provide both rural carriers and competitive eligible telecommunications carriers greater certainty as to the level of available per-line support in the study area or disaggregation zone. We are concerned that permitting incumbent carriers to modify the disaggregation plans they have elected during the five year period may, in certain instances, undermine the universal service goals of specific and predictable support and allow carriers to engage in anti-competitive behavior. We are confident that state commissions, when considering modification requests, will safeguard against anti-competitive manipulation of the disaggregation and targeting of support that could occur with such requests.

155. We are also mindful that in a few limited instances, a competitive carrier may have, prior to the effective date of the disaggregation rules adopted in this Order, entered the service area of a rural incumbent local exchange carrier and been designated as an eligible telecommunications carrier for purposes of receiving high-cost support.[382] In such instances, we believe that permitting the incumbent carrier to self-certify to a disaggregation plan may result in the anti-competitive targeting of support. Accordingly, for those study areas in which a competitive carrier has been designated as an eligible telecommunications carrier prior to the effective date of these rules, an incumbent carrier may elect a disaggregation plan under Path Three only to the extent that it is self-certifying a disaggregation and

[381] *See, e.g.*, CUSC Comments App. A at 7-8; Ad Hoc Telecommunications User Committee Comments at 25.

[382] *See, e.g.*, Ad Hoc Telecommunications User Committee Comments at 24-25.

targeting plan that has already been approved by the state. In all other instances in which a competitive eligible telecommunications carrier has been designated prior to the effective date of these rules, the incumbent carrier must seek prior state approval of its disaggregation and targeting plan under Path Two. We believe this approach will prevent the anti-competitive targeting of support.

156. We disagree with commenters that argue that carriers self-certifying under Path Three should be permitted to disaggregate to three or more zones below the wire center level.[383] We believe that permitting carriers to disaggregate and target support to more than two zones below the wire center level without prior regulatory approval would provide too great an opportunity to disaggregate support in an anti-competitive manner. If allowed to disaggregate and target support to more than two zones, a carrier would have greater opportunity to target excessive support to areas in which competition is not likely to occur and inadequate support to areas likely to be served by competitors. For example, if permitted to disaggregate and target to three zones, a carrier could develop a zone that matches a wireless competitive eligible telecommunications carrier's footprint within a state and deliver little or no support to that zone.

157. By contrast, if a carrier is permitted to disaggregate and target to a maximum of two zones below the wire center level, there is greater incentive for the carrier to target support based only on the cost differentials between zones. For example, a rural carrier's wire center typically serves a small town and the surrounding agricultural areas. The cost of serving the town is significantly lower than the cost of serving the agricultural areas because of differences in population density and the distances of customers from the wire center. It is reasonable to expect that if two zones are developed, they would reflect the cost differences between serving the town and serving the agricultural areas respectively. If a carrier were to develop two zones in a manner that did not reflect these cost differences, the per-line support amount would not be related to the relative cost of serving the customer. This would result in the delivery of excessive support to one zone and thereby create an artificial incentive for a competitive carrier to enter in order to receive support in excess of its cost to serve the customer. Such a result is contrary to the incumbent carrier's interest. Given this outcome, we believe that less regulatory oversight is warranted as an initial matter with regard to developing two zones below the wire center level in contrast to three zones.

158. For this same reason, we reject the MAG proposal that carriers be permitted to disaggregate and target support up to three zones per wire center by filing these zones and the associated per-line support with the Commission, relevant state regulators and federal regulatory authorities, and USAC.[384] We note however, that, although carriers are precluded from self-certifying disaggregation plans for more than two zones below the wire center level, there are no such limitations on plans that may be approved by a state commission or other appropriate regulatory authority under Path Two. We disagree that Path Two does not represent a realistic option for disaggregating support to a level greater than two zones because the process would be a "lengthy and expensive one" and carriers would be faced with the process of having to repeat the process at any time due to fact that a plan approved under Path Two is "subject to change or challenge at any time." [385] While we acknowledge that a carrier may bear a heavier burden than under Path Three, we believe Path Two appropriately balances such burden with the

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[383] *See, e.g.*, SDITC Comments at 10; Texas Commission Comments at 7; M&B Reply Comments at 8.

[384] *See MAG NPRM,* 16 FCC Rcd at 464 para. 11, 495 App. A. Under the MAG proposal, support must be allocated in a manner reasonably related to the cost of providing service in each cost zone, and the plan must remain in effect for at least four years. *See also* Plains Rural Independent Companies Comments in CC Docket No. 00-256 at 14 (supporting the disaggregation of support to three zones); *but see* ASCENT Comments in CC Docket No. 00-256 at 6.

[385] *See* SDITC Comments at 9-10.

greater need for scrutiny required of a plan that disaggregates support at a level greater than two zones below the wire center. Moreover, we note that Path Two, and the disaggregation and targeting scheme proposed by the Rural Task Force in general, as a consensus reflects the balancing of such concerns by rural carriers and competitive carries.

159. We agree with the Rural Task Force that certain general requirements should govern carriers' disaggregation plans and adopt those proposed by the Rural Task Force. We require that an incumbent carrier's study area support in total for a study area from the disaggregated method employed equal the total support available in the study area on a non-disaggregated basis. We also require that relative per-line support relationships between disaggregation zones for each disaggregated category of support remain fixed over time (except as changes are allowed by the Path descriptions described above) and that such relationships be made publicly available.[386] Once a competitive eligible telecommunications carrier is designated in a rural study area, per-line amounts to determine the competitive eligible telecommunications carrier's support should be based on the incumbent carrier's total support levels, lines, and disaggregated support relationships. We further require that the per-line support for each category of support in each disaggregation zone be determined such that the relative support relationships between zones will be maintained and that the product of all of the incumbent's lines for each cost zone multiplied by the per-line support for those zones when added together equal the sum of the incumbent's total level of support. Prior to the certification of a competitive eligible telecommunications carrier in a study area, monthly support payments to the incumbent carrier should be made based on the total annual amount of support for the study area divided by twelve. Finally, we require that per-line support amounts for each zone be recalculated whenever an incumbent's total annual support changes using the changed support amounts and lines at that point in time.

160. We find that these general requirements will ensure that the disaggregation and targeting of support is accomplished in a manner that is consistent with the universal service principles of specificity, predictability, and competitive neutrality.[387] By requiring that carriers make publicly available the per-line level of support for lines served in a particular zone and the basis for the disaggregation method, the distribution of disaggregated support will remain specific and predictable. Similarly, because support is portable among all eligible telecommunications carriers and disaggregated in a manner that ensures that support levels remain constant on a relative basis between zones regardless of the disaggregation and targeting path chosen, the distribution of support is competitively neutral. We expect the states will apply these general requirements to the approval and oversight of disaggregation and targeting plans implemented pursuant to this Order.[388]

161. We also recognize, as did the Rural Task Force and several commenters, that the integrity and flow of information to competitors is central to ensuring that support is distributed in a competitively neutral manner.[389] We find that in order to ensure portability and predictability in the

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[386] For example, assume a study area with support disaggregated into two zones A and B each with 100 lines. Total support is \$3000 and support is disaggregated such that zone A receives \$10 per line and zone B receives \$20 per line. Thus, relative per line support is \$20/\$10 per line. Because per-line support relationships are to be fixed, zone B always receives twice as much support as zone A. If support were to decrease to \$2700 for the study area, zone A support would decrease to \$9 per line and zone B support would decrease to \$18 per line.

[387] *See* 47 U.S.C § 254(b)(5); *First Report and Order*, 12 FCC Rcd 8801-03 paras. 46-51.

[388] If a competitive eligible telecommunications carrier or other party believes that a state approved disaggregation plan is inconsistent with these general requirements, or the specific requirements enumerated under each of the various paths, it may file a petition for declaratory ruling, rulemaking, or other appropriate action with the Commission.

[389] *See, e.g.*, CUSC Comments App. A at 10.

delivery of support, rural incumbent local exchange carriers must submit to USAC maps in which the boundaries of the designated disaggregation zones of support are clearly specified, which USAC will make available for public inspection by competitors and other interested parties. We require that, when submitting information in support of self-certification, an incumbent carrier must provide USAC with publicly available information that allows competitors to verify and reproduce the algorithm used to determine zone support levels. As discussed above, the carrier also must demonstrate that the underlying rationale is reasonably related to the cost of providing service for each cost zone within each disaggregated category. Similarly, we require carriers electing Path One to submit to USAC a copy of the certification to the state commission or appropriate regulatory authority certifying that it will not disaggregate and target support. Carriers selecting Path Two must submit a copy to USAC of the order approving the disaggregation plan submitted by the carrier to the state commission or appropriate regulatory and a copy of the disaggregation plan approved by the state commission or appropriate regulatory authority.

162. We decline to adopt WorldCom's proposal that we should not permit disaggregation of rural carrier universal service high-cost support until work on rural carrier specific inputs to the forward-looking model has been completed. According to WorldCom, the Commission recognized in the *First Report and Order* that "the only reasonable approach to disaggregation is to use a forward-looking cost model to allocate support among zones."[390] Contrary to WorldCom's contention, the Commission, while endorsing the use of a forward-looking mechanism to determine high-cost support for rural carriers in the future, simply recognized that once in place "such a mechanism could target support by calculating costs over a smaller geographic area than study areas currently used."[391] The Commission did not find that the use of a forward-looking mechanism is the only reasonable approach to disaggregation nor did the Commission address the issue of the appropriate methodology for the disaggregation of support during the period prior to the implementation of a forward-looking mechanism for rural carriers.[392]

163. We also reject the proposal to require disaggregation consistent with unbundled network element (UNE) zones in order not to discourage competition in some rural zones while artificially stimulating competition in others through universal service support windfalls.[393] As an initial matter, we note that a rural carrier is not required to provide UNEs until it has received a request to provide them and the state commission determines that the request is not unduly economically burdensome, is technologically feasible, and is consistent with section 254 of the Act.[394] Thus, as a general matter, rural carriers would not necessarily establish unbundled network element rates or zones. Moreover, as discussed above, the flexibility inherent in the Rural Task Force's proposal allows for the disaggregation and targeting of support to levels which may be more geographically deaveraged than a UNE zone level thus delivering a per-line level of support more closely associated with the cost of providing service.[395]

164. Finally, we note that the Rural Task Force recommended that the level of disaggregation of support be considered in determining whether to certify new eligible telecommunications carriers for a service area other than the entire study area of rural carrier study area. We believe that the level of

[390] WorldCom Comments Attachment at 9 (citing the *First Report and Order*, at para. (*sic)* 293).

[391] *First Report and Order*, 12 FCC Rcd at 8935-36 para 293.

[392] As WorldCom concedes, "[t]he Commission found in the [*First Report and Order*], that the ability to target support to smaller areas is one of the benefits of a forward-looking economic cost methodology." WorldCom Comments Attachment at 9 n.19.

[393] *See* California Commission Comments at 14.

[394] *See* 47 U.S.C. § 251(f).

[395] *See* 47 C.F.R. § 54.307(a)(2).

disaggregation of support should be considered in determining whether to certify new eligible telecommunications carriers for a service area other than a rural carrier's entire study area to ensure that competitive neutrality is maintained between incumbent carriers and competitive eligible telecommunications carriers.

E. Duration of the Rural Task Force Plan

1. Background

165. The Rural Task Force urged that its recommendation be implemented immediately and remain in place over a five-year period.[396] In support of this proposal, the Rural Task Force argued that "it is unrealistic to expect any universal service mechanism to provide a stable, predictable and workable funding source for a period longer than five years."[397]

166. The Joint Board did not state a position on the overall duration of the Rural Task Force's plan, but urged the Commission to refer to the Joint Board, no later than January 1, 2002, a proceeding to consider implementation of an appropriate high-cost mechanism for rural telephone companies after the expiration of the Rural Task Force's plan.[398] According to the Joint Board, this proposed timing would permit the Joint Board and the Commission to consider the appropriate rural mechanism to succeed the Rural Task Force's recommendation and devote sufficient time to the task prior to the termination of that plan. The Joint Board noted that the Commission and the Joint Board already are committed to reviewing the operation of the high-cost support mechanism for non-rural carriers on or before January 1, 2003.[399] The Joint Board also recommended eventual comprehensive review of the high-cost support mechanisms for rural and non-rural carriers as a whole to ensure that both mechanisms function efficiently and in a coordinated fashion. The Joint Board urged the Commission to use the transitional period during which a modified embedded cost mechanism is in place to develop a long-term universal service plan that better targets support to rural companies serving the highest cost areas and that recognizes the significant distinctions among rural carriers and between rural and non-rural carriers.

2. Discussion

167. We agree with the Rural Task Force that a modified version of the current high-cost loop support mechanism under Part 36 of the Commission's rules should remain in place for no more than five years. Although the modifications we adopt are transitional in nature, we believe that providing rural telephone companies with a predictable level of universal service support during a five-year period will create a stable environment that will enable rural telephone companies to continue providing supported services at affordable rates to rural America. We therefore disagree with those commenters that claim the Rural Task Force's proposals will not provide stability to rural carriers.[400] We find that the Rural Task Force's proposed framework, with the modifications discussed herein, shall remain in place for five years. We would expect the Commission to consult with the Joint Board before allowing the

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[396] *See* Rural Task Force Recommendation at 15.

[397] *Id.*

[398] *See Joint Board Recommended Decision* at para. 21.

[399] *See id.* (citing *Federal-State Joint Board on Universal Service, Access Charge Reform*, CC Docket Nos. 96-45, 96-262, Seventh Report & Order and Thirteenth Order on Reconsideration in CC Docket No. 96-45, Fourth Report & Order in CC Docket No. 96-262, and Further Notice of Proposed Rulemaking, 14 FCC Rcd 8077, 8123 para. 94 (1999)).

[400] *See, e.g.*, Texas Commission Comments at 3.